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**BEFORE THE ARIZONA CORPORATION COMMISSION**

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Commissioner  
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AZ CORP COMMISSION  
DOCUMENT CONTROL

IN THE MATTER OF THE APPLICATION OF  
WEST END WATER COMPANY FOR  
EXTENSION OF EXISTING CERTIFICATE  
OF CONVENIENCE AND NECESSITY

) DOCKET NO. W-01157A-05-0706  
)  
) OPENING POST HEARING BRIEF  
) OF THE CITY OF SURPRISE  
)  
)

Arizona Corporation Commission  
**DOCKETED**

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Pursuant to the Administrative Law Judge's direction given at the close of the evidentiary hearings, the City of Surprise ("Surprise" or "the City") hereby submits its Opening Post-Hearing Brief.

## **I. INTRODUCTION**

By means of its application for an extension of its certificate of convenience and necessity ("CC&N"), the West End Water Company ("West End" or "the Company") seeks to provide water services to all parts of the proposed Walden Ranch Development ("Walden Ranch" or "Development"). The City intervened in this matter to articulate and urge enforcement of the City of Surprise's policy opposing the expansion of all private water companies in its General Planning Area ("GPA"). The Walden Ranch Development is within the City's GPA.

It is important to note at the outset that, whether this land is ultimately served by the City of Surprise or by West End, the facilities to be built will be funded and constructed wholly by the project developer. The property that is the subject of this CC&N extension application is vacant, undeveloped, and uninhabited. West End argues that the proper course is to use the developer's funds to transform a tiny water company into a small water company in order to have a single provider for all of Walden Ranch.<sup>1</sup> This would require West End to expand from a 200-customer water company (with past fiscal compliance issues and virtually no growth in 40 years) into a 1,500-customer company, at the expense of rate payers.

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<sup>1</sup> Interestingly, when asked if it was aware that Walden Ranch could be required to receive water service from two providers instead of just one and if that might pose a problem, the developer testified that he was fully aware of this possibility and found it entirely acceptable to have service from two different providers. (See September Transcript ("Sept. Tr.") 88:14-25.)

The City of Surprise disagrees with this ultimately short-sighted approach. Residents living within the City of Surprise General Planning Area will ultimately be better served by a municipal provider that is able to deliver integrated water and sewer services. Evidence presented at the hearing confirms that integrated municipal services are more affordable, higher in quality, and accompanied by higher standards and greater protections than private water delivery services. That Walden Ranch, ultimately, might be serviced in part by West End and in part by the City should not be the crucial factor in the Commission's analysis. This arrangement is not only acceptable to the developer, but also in the best interest of the water customers who will receive municipal services. The City is already annexing and serving developments near and beyond Walden Ranch, and it is only a matter of time before it provides water and sewer service to the entire area. The City should be permitted to implement its long-term, ratified plan to provide water services on this parcel, consistent with the ultimate obligation it has to provide all type of municipal services to this development including sewer, road infrastructure, police, and fire services.

## **II. STAKEHOLDERS IN THIS DISPUTE**

### **A. Surprise, its General Plan, and Water Services Department**

Surprise, like many other Arizona communities, is experiencing explosive growth. Between 2000 and today, its population swelled from roughly thirty thousand to over one hundred thousand. (May 2006 Transcript ("May Tr.") 65:25-66:10.) Along with this population growth, the City increased in size via the annexation of land located within its GPA. (See, e.g., May Tr. 66:11-21 (discussing annexation projects within the Surprise GPA); Exhibit ("Ex.") COS-9 (map illustrating ongoing annexation projects).)

The City's Water Services Department administers and oversees all water and sewer planning and operations for the City of Surprise. (May Tr. 190:15-17.) As would be expected, during the recent fast-paced growth, the City's Water Services Department customer base underwent rapid expansion, with its water customers increasing from 2,465 in year 2000 to 12,670 in the year 2006. (Ex. COS-13; May Tr. 191:20-192:23.) This recent growth established unequivocally that the Surprise Water Services Department can successfully manage the pressures created by periods of significant growth. This experience shows that the City would have no difficulty adding 1,500 additional Walden Ranch customers to its 12,670 (plus) customer base. (May Tr. 193:7-21.)

To provide water and sewer services to thousands of Surprise citizens, the City relies on a sizable staff. (Ex. COS-12; May Tr. 241:20-242:2.) Customers are provided a myriad of services by the City, including 24-hour customer service, online information at water and wastewater websites, automatic bill payment options, prepaid billing options, and conveniently located payment drop boxes at multiple locations throughout the City. (Ex. COS-12.; May Tr. 191:5-19.)

While traditionally the City only provided water and sewer services within its corporate limits, more recently, the City has agreed to provide these services to areas within its GPA, but outside the current corporate limits. (May Tr. 194:11-195:1; May Tr. 73:24-74:15.) Consequently, the City is ready, willing, and able to provide integrated water and sewer services to Walden Ranch, regardless of its annexation status. (*Id.*; Ex. COS-16 at p. 4-5.) Further, no one disputes that the City can provide these integrated services as rapidly as West End (and West End will be providing only water

service).<sup>2</sup> (May Tr. 195:2-13; May Tr. 267:18-268:2; *see also* September Transcript ("Sept. Tr.") at 88:1-3 (developer testifying that it is comfortable that City and West End can provide services).) As Staff expert witness, Ms. Hains, testified, the timeframe for engineering and building the water system would be the same whether West End or the City of Surprise is the service provider because the developer will be funding and constructing the necessary infrastructure. (May Tr. 199:16-200:6; May Tr. 265:22-266:17; May Tr. 267:18-268:2; *see also* May Tr. 47:22-48:3 (noting that both West End and the City would need to build new plant and infrastructure to service Walden Ranch); Sept. Tr. at 88:20 (developer testifying that it has already spent at least one million dollars on building water services plant and infrastructure).)

The City's move toward providing integrated water and sewer services throughout its GPA is consistent with the Surprise General Plan ("General Plan"). (See Ex. COS-10 at p.123-24.) The General Plan was adopted, and later ratified by public vote, after being developed in coordination with state agencies and other experts in city planning matters. (See *generally* May Tr. 75:6-76:12.) These experts concluded that to prevent "negatively impact[ing] the supply and quality of the city's water resources," the City should provide "all future water service in areas that are not currently covered by an existing water franchise." (Ex. COS-10 at p.123-124.) The General Plan explains that to ensure both adequate supply and high quality water service for all future citizens of

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<sup>2</sup> The City of Surprise has been designated the sewer provider for all future development within its GPA. (See, e.g., COS-16 at p. 5.) Surprise was so designated in 2002 pursuant to the MAG 208 Water Quality Management Plan planning process, which followed the recommendation contained in the City's General Plan. This designation was sought by the City of Surprise to safeguard against the havoc created by unplanned development and multiple providers. (See May Tr. 214:2-17.) The propriety of the MAG designation, or the process that led to the designation, is not at issue in this proceeding.

Surprise, “[i]t is the city’s intent to not allow additional water service franchises into the planning area.” (*Id.* at p. 124.)

**B. Walden Ranch**

Walden Ranch is within the City’s GPA, approximately a mile and a half from the current City boundary. Presently, the Walden Ranch property is uninhabited and it is anticipated that there will be no water service customers for at least two to three more years. (May Tr. 46:2-6.) During this same two to three year period, significant annexation will occur within the City of Surprise GPA. (See COS-9 (Annexation Map); May Tr. 67:16-70:13.) While at the present time Surprise cannot provide a specific date for the annexation of Walden Ranch, this is not because annexation is not anticipated, rather, it is because annexation sequences are difficult to predict. The City fully expects to annex this area. (May Tr. 70:21-72:23; Sept. Tr. 79:3-14 (developer noting that both the developer and the City “anticipate[] that annexation will occur”).)

Indeed, Walden Ranch has been in communication with the City for some time about the possible annexation of the Development. (May Tr. 205:2-208:16; Sept. Tr. 79:3-14; Ex. COS-15.) During this same period the property in question has been the subject of a sale agreement. In July 2005, an agreement was executed for sale of Walden Ranch (by Walden Farms, LLC) to Woodside Walden, LLC (“Woodside Homes”). (May Tr. 202:8-203:14; May Tr. 25:20-26:1; Sept. Tr. 20:12-19; Sept. Tr. 62:24-63:3; Ex. COS-2.) The sale is set to take place in three stages, with the final stage transferring the property at issue in this dispute to Woodside homes. Just prior to the May hearing in this matter, the City learned that Woodside Homes, like the prior Walden Ranch developer, desired annexation of Walden Ranch as soon as possible.

(May Tr. 205:2-10; *see generally* Ex. COS-15.) The City also learned that Woodside Homes, as of May 2006, had not requested water service from a private water company for the portion of the Development at issue in this Application. (May Tr. 204:20-205:1.) On July 14, 2006, Woodside Homes formally requested water and sewer services from the City. (Ex. COS-20; *see* Sept. Tr. 76:12-14 (Woodside Homes testifying that it “has requested water services from the City”); Sept. Tr. 94:5-20.) In contrast, despite being asked in late July 2006 by West End “for a letter of support for [West End’s extension request],” Woodside Homes chose not to request services from West End. (*See* Sept. Tr. 84:25-85:10 and 86:4-11.)

On July 17, 2006, the City responded to Woodside Homes’ formal request, agreeing “to be the water provider for this property and . . . provide water service to the project once all City requirements and obligations have been satisfied.” (Ex. COS-21; *see* Sept. Tr. 101:13-102:10.) On August 30, 2006, at the request of Woodside Homes, the former owner of Walden Ranch withdrew its March 3, 2005 request for water service from West End. (Ex. COS-22; *see* Sept. Tr. 28:19-29:14, 37:3-10.) When questioned why water services for Walden Ranch were originally requested from West End, not the City, the former owner explained that two years ago “the City of Surprise was not in the picture” as a possible water provider, so it was never an issue of preferring West End over Surprise. (Sept. Tr. 44:21-45:1; *see* Sept. Tr. 38:24-39:4 (stating that back in March of 2005 the developer was not aware that Surprise could provide water services to Walden Ranch).) However, significant developments have occurred since March 2005, with the rapid growth and development of Surprise, as well as recent changes in Surprise policy now allowing for City services to be provided to the GPA prior to



annexation. (*See generally* May Tr. 73:12-74:15.) Today, the developer understands that the City can provide quality water service to Walden Ranch. (*See generally* Sept. Tr. 78:18-21.) Further, the City and developer are happy to work together to have the City do just that. (*See generally* Sept. Tr. 87:24-88:3.)

### **C. West End Water Company**

West End is a "small water system serving a rural population" that serves 215 customers. (Exhibit A-4, p.5; May Tr. 160:24-261:2; May Tr. 161:18-25; *see also* May Tr. 40:24-41:8 (comparing Surprise and West End).) Should West End serve Walden Ranch, it can expect an increase of around 1,500 residential customers, in addition to new commercial customers. (May Tr. 41:9-11.) Unlike Surprise, West End has never experienced this sort of rapid growth. (May Tr. 41:12-22.)

Further, unlike Surprise, West End's water system has struggled over the years to serve the customers it already has. In a letter to the Maricopa County Planning and Development Department asking that West End not be allowed to provide water services to Walden Ranch, one long-term West End customer offered the following assessment:

I also object to the use of West End Water Company for [the Walden Ranch] water source. Only last year the state upgraded the well for Mr. Campbell, when they had to move the well to widen the road, and our water pressure is normal. We have always had bad water pressure and times of no water at all. I don't believe the system is able to handle the adding of this many homes. After 25 years of bad water pressure and sometimes no water at all, I do not want to go back to that. It is a sad day when there isn't enough pressure to pump water up to the cooler in the summer.

(Ex. A-16 at March 9, 2004 letter from Christine Florendo to Ms. Averitt.)

Presently, West End maintains two separate water systems, both operating without backup.<sup>3</sup> (May Tr. 256:8-25.) The existing Wheat system has one well capable of producing 25 gpm and serves 14 customers. This well will be abandoned if the developer funded facilities are constructed. (May Tr. 163:17-24). The other system is the Wittman system, which has a well capable of producing water at a rate of 250 gpm. If the developer proceeds with constructing a water system, the existing Wittman well will be incorporated into the proposed new system and connected to a second well with 325 gpm capacity. This combined Wittman system will then be connected to the much larger Walden Ranch Booster Station constructed by the developer, which will have firm well capacity of 2040 gpm. (Ex. A-4, p.12.) Total capacity of the new system will be 2,635 gpm, nearly ten times the capacity of the current West End water system (275 gpm). This apparent complete rebuilding of the West End Water Company facilities was confirmed by Mr. Jones who testified that once the Walden Ranch development is complete, 85 -90% of the infrastructure belonging to West End will have been constructed by the developer, or put differently, only 10-15% of the infrastructure will have been funded and constructed by the West End Water Company.

In recent years, West End's systems experienced abnormally high water loss, including a loss as high as 19%, and an ongoing loss rate of 16%. (May Tr. 270:20-271:8; May Tr. 257:25-258:24 (discussing Staff's concerns about water loss and West End's failure to yet adequately address them).) Further, the existing West End Water system does not comply with the 2003 International Fire Code, adopted for all new

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<sup>3</sup> Consistent with Surprise's General Plan, Surprise's water system operates with backup, thereby ensuring continuous pressurized service during heavy demand and emergency conditions. (See, e.g., COS-10 at p. 123-24.)

developments by the City of Surprise. (May Tr. 268:3-8; Ex. A-4, p.6.) Today, West End's system is inadequate to serve new development planned within its existing CC&N area. (See May Tr. 48:5-25.)

West End maintains minimal cash reserves. As of the date of its application, it possessed only \$564.12 in cash. (Ex. A-1.) West End's Manager, who is responsible for day-to-day operations (Ex. A-7), when asked, could not provide any details about what cash resources West End would access if it needed to fund improvements, whether emergency or routine, to its facilities. (May Tr. 50:23-51:11.) West End's limited financial resources may be explained by its having "had negative earnings every year for quite some time." (Ex. COS-1.)

Recently, West End filed a rate application with the Commission seeking a 69.16% increase in total revenues.<sup>4</sup> (*Id.*) This application, which does not include costs associated with serving Walden Ranch and contemplates "slow customer growth, only expecting to add 5 or 6 customers per year in the next two years," seeks significant rate increases. (*Id.*) These increased rates would apply to ratepayers in the requested extension area, should West End be authorized to serve the area. (May Tr. 29:12-25; *see also* May Tr. 45-13-46:17 (discussing the considerable discrepancy between West End's customer growth estimates in this CC&N request and its rate application).)

While West End has no prior experience working with private developers to provide water services to large new developments, over the past five years two developer complaints were filed at the Commission against its sister company, Sunrise Water Company ("Sunrise"). (See Exs. COS-4 and COS-7.) In the first of these

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<sup>4</sup> In contrast, Surprise is not planning for any rate increases in the immediate future.

complaints, Sunrise (which shares the same owner, manager, and staff as West End) was found to have made inappropriate use of certain developer funds, and then was ordered by the Commission to refund that developer over \$150,000. (See Exs. COS-4 and COS-5; May Tr. 94:10-95:14.) Later, as part of a settlement agreement, Sunrise actually refunded to the developer \$105,000. (See Ex. COS-6; May Tr. 96:9-25.) The second developer complaint, which contained new allegations of fund misuse, settled after Staff issued a report expressing concern that funds may have been mishandled and recommending that Sunrise be required to demonstrate that it had properly handled developer funds. (See Exhibit COS-7 and COS-8; May Tr. 98:23-103:15.)

### **III. THE COMMISSION SHOULD DENY WEST END'S APPLICATION**

This case presents a unique circumstance that is completely unlike a dispute between two private water companies vying to serve the same property. As a municipality, the City of Surprise has independent legal authority that would allow it to serve as the sole water service provider for this parcel. The Commission has a corresponding obligation to grant special deference to the City and its citizen-endorsed GPA growth plan. For the reasons which follow, the City submits that the Commission should deny West End's Application to extend its CC&N.

#### **A. The Application filed by West End Water Company is Insufficient**

Staff traditionally requires a request for service letter to be submitted by any public service corporation before it will deem a CC&N extension application sufficient. (See, e.g., Ex. A-9 at ¶ 8; Sept. Tr. 171:17-22 (Staff testimony that it traditionally will "require" a public service corporation to have a request for service letter to deem the application sufficient).) Having a current, up-to-date request for service is important

because it demonstrates that there is actual necessity for a CC&N to issue to a private water company. Absent such a request, the Commission has no guarantee that any necessity exists for a private water company to provide service. There are two important reasons why the Commission must not issue a CC&N without a proper showing of necessity.

First, should a CC&N issue under such conditions, there is risk that the CC&N will lie dormant, which obstructs regional planning and allows speculators (with little capital investment to reap windfall profits in condemnation proceedings (ultimately penalizing ratepayers). *See, e.g., Sende Vista Water Co. v. City of Phoenix*, 127 Ariz. 42, 617 P.2d 1158 (Ct. App. 1980).

Second, absent a request for service letter to a private water company, the Commission runs of interfering with a municipality's constitutional authority to provide services. (*See, infra*, at Section III(B).) If a municipality is ready, able and willing to serve a parcel of property, that authority should not be challenged as an initial matter unless the Commission is presented with a valid request for service letter (and preferably even a prepared line extension agreement with the private company). Thus, the request for service letter acts as an important safeguard by establishing that the affected property owner has an express preference for service by the private water company. (*See generally* May Tr. 177:2-25 (noting that it is best to wait to issue a CC&N until there is a request for service and preparation of the necessary line extension agreement).)<sup>5</sup>

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<sup>5</sup> West End and Walden Ranch have not executed a line extension agreement. (May Tr. 148:2-3.)

Here, Staff appears to have dispensed with the request for service requirement based on testimony from the developer that he is happy to receive services from either provider, and because Walden Ranch will likely require water services within the next few years. (See Sept. Tr. 166:16-24 (Staff testimony that its recommendation is based on the understanding that "somebody needs to serve" Walden Ranch).) While Staff may have properly considered the risk of a dormant CC&N (and determined that this risk is minimal with respect to Walden Ranch), Staff has not adequately considered whether the Commission may be unconstitutionally interfering with a municipality's right to serve if it grants a CC&N extension where the developer has *only* requested service from the municipality, and has made no such request to the private water provider. (Ex. COS-22; see Sept. Tr. 28:19-29:14, 37:3-10 (withdrawal of March 3, 2005 request).)

Should the Commission grant West End's request to extend its CC&N, it will be interfering with the City's constitutional right to provide service where the City is willing to serve Walden Ranch and Walden Ranch is happy to accept service from Surprise. (See, *supra*, at Section II(B) (citing evidence showing that West End's March 2005 request for service, issued at a time when the developer was not aware that Surprise would provide water service to Walden Ranch, has been withdrawn and that Walden Ranch has since only requested service from Surprise).)

For this reason, without a valid request for service to West End there is an insufficient showing of public necessity to grant West End's application. The Commission should either deny the application outright as insufficient, or postpone any decision until the new owner of Walden Ranch informs the Commission that it has a preference regarding which entity should provide water service. (See *generally* May Tr.

186:10-25 (noting the only reason for the extension request is to serve Walden Ranch and, if the current developer wants to move forward on water services, he could submit a letter requesting those services); Sept. Tr. 171:23-172:7 (Staff testimony that in her experience a developer has never before remained neutral on who should provide water services to its development when asked by the Commission); Sept. Tr. 157:5-7 (West End Expert, Mr. Ray Jones, explaining that it is "uncommon" for a developer to remain neutral on who provides water services); Sept. Tr. 89:1-14 (ALJ commenting that it is surprising that the developer would have no preference).) Issuing a CC&N without a request for service would create too great a risk that the ultimate owner will have no investment in the selection and/or the Commission will interfere with the City's constitutional authority to provide service. (*See generally* Sept. Tr. 87:16-17 and 24-25 (developer testimony suggesting that insufficient thought has been given to selection of a water service provider given that the developer stated he "would request water from my brother if I could" and is "comfortable with any scenario that provides water to the project").)

**B. The City of Surprise Has Independent Constitutional Authority to Provide Water Service**

The Constitution expressly grants Surprise the right to provide water services both inside and outside its corporate limits. Const. art. II, § 34 ("[E]ach municipal corporation within the state of Arizona shall have the right to engage in industrial pursuits."); Const. art. XIII, § 5 ("Every municipal corporation within this state shall have the right to engage in any business or enterprise which may be engaged in by a person, firm, or corporation by virtue of a franchise from said municipal corporation."); *see City of Phoenix v. Kasun*, 54 Ariz. 470, 474, 97 P.2d 210, 212 (1939) (listing the "rules

governing municipal corporations,” which include “the right to furnish water . . . to customers without, as well as within, its corporate limits”). Were the Commission to interfere with this constitutionally protected right, it would be exceeding its constitutionally defined authority. *See generally City of Phoenix v. Wright*, 52 Ariz. 227, 236-37, 80 P.2d 390, 393-94 (1938) (holding that the Commission exceeded its authority when it attempted to regulate a municipality-owned water system operating outside of the municipality’s corporate limits).

Because the City is not a public service corporation, the Commission has no statutory authority to issue it a CC&N or, for that matter, Constitutional authority to regulate a municipal provider’s activities. Const. art. XV, § 2 (“All corporations *other than municipal* engaged in furnishing [public utility services] shall be deemed public service corporations.”) (emphasis added). “[N]o plainer language could have been used by the makers of the Constitution to state that the constitutional powers conferred upon the . . . Commission, in regard to the government and regulation of public utilities, were not intended to, and did not, include those owned and operated by municipal corporations of any character.” *Menderson v. City of Phoenix*, 51 Ariz. 280, 283, 76 P.2d 321, 322 (1938). “[T]he Constitution not only does not expressly authorize the . . . Commission to regulate municipal corporations . . . , by necessary implication, [it] forbids such regulation.” *Id.*

It is also beyond dispute that the Commission could not, without consent from the City of Surprise, grant a public service corporation a CC&N or CC&N extension to operate within the City’s corporate limits. *See generally* A.R.S. § 40-282(B) (“Every applicant for a [CC&N] shall submit to the commission evidence . . . to show that the



applicant has received the required consent . . . of the proper county, city and county, municipal or other public authority.”); May Tr. 304:18-24. Indeed, Commission Staff acknowledges this limitation on the Commission’s authority each time a CC&N application lacking the prerequisite consent is deemed insufficient. (*See, e.g.*, Ex. A-9 at ¶10 (finding West End’s initial application insufficient because it lacked the necessary franchise agreement); *see also* Exs. A-5 and A-12 (showing West End’s application was only deemed sufficient after it secured the necessary county franchise).) Consequently, if the requested extension area in this matter were within Surprise’s corporate limits, the Commission would be legally prohibited from granting West End’s application without the consent of the City of Surprise.<sup>6</sup>

Walden Ranch, while within the Surprise GPA and less than two miles from the City’s boundary, is not yet within Surprise’s corporate limits. This pre-annexation status raises the following question: When considering West End’s application, what special deference must the Commission give to the City’s request to serve this property and the property owner’s willingness to receive such service from the City?

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<sup>6</sup> Indeed, were Walden Ranch within Surprise’s corporate limits, the Commission could not even issue an order preliminary pursuant to A.R.S. § 40-282(D) because that statute limits the Commission’s authority when issuing such orders to situations where the public service corporation “contemplates securing” the required municipality consent. Here, West End cannot contemplate securing such consent given, among other things, that it would directly conflict with the Surprise General Plan and that Surprise has intervened in this matter and opposed the requested extension application. Order preliminaries are reserved for those situations where there is no doubt that the public service corporation can and will obtain the necessary municipal consent. *See, e.g., Arizona Public Serv. Co. v. Southern Union Gas Co.*, 76 Ariz. 373, 378-79, 265 P.2d 435, 439 (1954) (Commission granted an order preliminary because the applicant provided proof that it would secure the necessary city franchise and noting that the applicant did subsequently obtain the franchise).

The Commission cannot treat the City's announced intention to serve the property as it would treat a competing public service corporation's CC&N application. *See generally City of Phoenix v. Wright*, 52 Ariz. 277, 80 P.2d 390 (holding that Constitution forbids Commission regulation of municipal corporations whether operating inside or outside of their corporation limits); *cf. James P. Paul Water Company v. Arizona Corporation Comm'n*, 137 Ariz. 426, 431, 671 P.2d 404, 409 (1983) (holding that the Commission cannot even use the legal standard for assessing two competing public service corporation's CC&N applications which "treat[s] cost as determinative of the public interest" when comparing an already certificated public service corporation with another that desires to acquire that certificate, but must, instead, "respect [the existing CC&N holder's] expectation . . . of an opportunity to provide service as needed" and not transfer the CC&N without a showing that the existing holder is "unable or unwilling to provide service at reasonable rates").<sup>7</sup>

No Arizona court has articulated what special deference the Commission must use when assessing whether to authorize a public service corporation to provide service in an area also targeted to be served by a municipality. There is, however, considerable case law articulating the special deference courts must give in analogous situations.

For example, in *Uni-Bell PVC Pipe Ass'n v. City of Phoenix*, No. CV-04-0099-PHX-DGC, 2005 U.S. Dist. LEXIS 30286 (D. Ariz. Nov. 28, 2005), a municipal ordinance prohibiting the use of PVC in sewer pipes was challenged. Judge Campbell

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<sup>7</sup> Staff appears to have approached Surprise's intervention as if it were reviewing two competing public service applications. Surprise had no obligation to submit a competing application to serve to the Commission because the Commission has no authority to judge the City's competence or authority to serve. (See May Tr. 309:24-311:12; May Tr. 326:12-327:6; May Tr. 328:7-329:5.)

noted that the "Arizona Supreme Court has stated that 'there is an area of discretion lodged in city officials in carrying out transactions for the benefit of the city and its inhabitants. In the absence of fraud or bad faith, the validity of their actions will not be entertained by the courts.'" *Id.* at 5 (quoting *Sulfur Springs Valley Elec. Coop., Inc. v. City of Tombstone*, 99 Ariz. 110, 407 P.2d 76, 78 (1965); see *City of Glendale v. White*, 67 Ariz. 231, 194 P.2d 435, 439 (1948) (holding that a court will not overturn the judgment of a city council unless the council's discretion was "unquestionably abused"); see also *Edwards v. State Bd. of Barber Examiners*, 72 Ariz. 108, 231 P.2d 450, 451 (1951) (holding that when reviewing the actions of a state agency, "courts will acquiesce in the legislative determination in all matters of fact unless it is clearly erroneous, arbitrary and wholly unwarranted"). The court explained that such deference was appropriate when "reviewing general city policy decisions" because "cities are both authorized to make such general determinations and more qualified to do so than courts." *Uni-Bell PVC Association*, 2005 U.S. LEXIS 30286 at \*7.

Indeed, in a dispute between the City of Scottsdale and an association representing several developers, both the Arizona Supreme Court and the Arizona Court of Appeals expressly recognized that a "municipality has the personnel and expertise to consider matters concerning acquisition of water supplies and its effect on current and future residents." *Home Builders Ass'n of Cent. Arizona v. City of Scottsdale*, 179 Ariz. 5, 11 875 P.2d 1310, 1316 (Ct. App. 1994); see *Homebuilders Ass'n of Cent. Arizona v. City of Scottsdale*, 187 Ariz. 479, 482-83, 930 P.2d 993, 996-97 (1997) (affirming Court of Appeals and noting that "the wisdom of Scottsdale's choice of methods of meeting its water needs is a legislative, not a judicial, question"). While

this case involved a challenge to a city's assessment of development fees (which are by statute subject to rational basis review), the rationale for deferring to city's water resource planning applies with full force to the provider selection question presented to the Commission in this case.

The Commission must give special deference to Surprise by avoiding any actions that would interfere with Surprise's constitutional authority to provide water service. Here, granting West End's application would directly interfere with Surprise's pre-existing General Plan, which provides that Surprise will provide services to the requested area in anticipation of its annexation into the City. Further, there is no compelling reason for the Commission to disregard Surprise's General Plan given that the property owner at issue is ready and willing to accept service from Surprise – indeed it has even formally requested such service. In the face of such a direct conflict, the Commission should deny West End's application. *Cf. City of Tucson v. Sims*, 39 Ariz. 168, 174, 4 P.2d 673, 675 (1931) ("In the management and operation of its electric plant a city . . . may conduct it in the manner which promises the greatest benefit to the city . . . it is not within the province of the court to interfere with the reasonable discretion of the [city] council in such matters."). Alternatively, the Commission should suspend the extension Application and give the developer time to make an informed decision regarding which water provider will best serve his planned development based on all relevant criteria including cost, timing, water flow and storage, effluent reuse, long-run cost to rate-payers, efficiencies, and public health and safety.

**C. The Public Interest Favors Water Service Delivered by the City of Surprise**

Were the Commission weighing two competing CC&N applications, it would judge the public interest "by comparing the capabilities and qualifications of [the public service corporations] vying for the exclusive right to provide the relevant service. The amounts of time and money competitors must spend (at the consumers' ultimate expense) to provide service become primary determinants of the public interest." *James P. Paul Water Company*, 137 Ariz. at 430, 671 P.2d at 408. Even under this general standard applicable to two competing public service corporations, the public interest favors denial of West End's application in this case. Not only is there no evidence of a public need at this time for water services from a private company, even if there were such a need, the City of Surprise is the more capable and qualified provider.

**1. Granting the Application Would Directly Conflict with Surprise's General Plan**

Any expansion by West End into new service territory in the City of Surprise GPA directly conflicts with the Surprise General Plan, which requires that the City provide "all future water service in areas [within the GPA] that are not currently covered by an existing water franchise." (Ex. COS-10 at p.124.) This condition exists in the General Plan for good reason. At the time Surprise adopted its General Plan (and still today), twelve different entities provided water services within the Surprise GPA. (See Ex. COS-17.) Three important long-term growth goals were advanced by the City of Surprise when it mandated a halt to the growth of new or existing private water companies.

**a) Promote Development of One Primary Water Services Provider**

First, as the Arizona Supreme Court recognized in *Citizens Utilities Water Company v. Superior Court*, 108 Ariz. 296, 299-300, 497 P.2d 55, 58-59 (1972), there is a "very powerful" argument that it is "desirable that the city have a 'metropolitan concept' of the supply and control of water; particularly, as the source of supply within the metropolitan area is not unlimited." (See also May Tr. 275:14-22 (testimony by Staff that municipalities desire that their residents receive service from one integrated water provider because "its easier to manage and then for long-term planning [the City] can handle all kinds of situation, emergency situation or other situation there"); May Tr. 210:13-20 (" . . . [T]he City's comprehensive, long-range plan . . . is in the best long-term interests of all residents."); Sept. Tr. 78:22-79:1 (testimony by developer that it is "important to the success of [Walden Ranch] that a regional infrastructure is in place: roads, water service, electricity, sewer service").)

To that end, the General Plan limits expansion of private water providers within Surprise's GPA in favor of Surprise providing those water services to its current and future citizens. Only by promoting the development of one, primary water service provider, will Surprise ensure that its anticipated growth into the GPA will "not negatively impact the supply and quality of the city's water resources." (Ex. COS-10 at p. 123.) Centralization and consolidation of new water services as they become needed with one primary provider ensures not only uniform pricing and services throughout the City, but also better planning for and response to routine and emergency situations. (See Ex. COS-16 at p. 6-7 (describing advantages of one integrated system over multiple, smaller systems).)

**b) Municipal Ownership Is in the Public's Long-Term Interest**

The Arizona Supreme Court has also recognized the "very powerful" argument that "it is desirable [for the city] to have control of construction and expense, of utility facilities in the areas of potential growth." *Citizens Utilities Water Co.*, 108 Ariz. at 300, 497 P.2d at 59. Indeed, it is for this very reason that almost every major Arizona municipality operates its own water services department, and frequently extends service into areas outside the city limits that it anticipates will be annexed into the city. See *generally id.* (approving city condemnation of water services outside present city limits).

Municipal ownership provides a myriad of advantages to private ownership, not the least of which is that municipal providers do not operate for profit. (See May Tr. 210:21-211:7.) Instead of focusing on shareholder value, municipal providers focus on providing "quality of life and quality services and maintain[ing] health standards . . . ." (*Id.*) Because they are not concerned with "paying dividends" to stockholders, municipalities "almost always" provide higher water quality standards than private water companies. (May Tr. 211:8-21; *see also* Ex. COS-16 at p. 6-7, and 8 (discussing advantages of municipality ownership).)

In this case, there is yet another advantage in the requested area being serviced by the City. This advantage relates to how the Walden Ranch developer would be reimbursed for funds expended on infrastructure.<sup>8</sup> West End would reimburse the developer over a period of time, typically ten years, by providing a percentage of

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<sup>8</sup> As explained *supra* at p. 4, whether West End or Surprise provides services, the developer will initially fund and construct the necessary infrastructure. For this reason, it is the developer, not West End or Surprise, who will determine the speed by which service is provided to Walden Ranch.

revenues collected from ratepayers. (See Ex. S-1 at p.1-2; May Tr. 147:19-148:16.)

The City would not reimburse the developer with money collected over time from ratepayers. (May Tr. 148:22-149:8.) Instead, development impact fees would be used. (May Tr. 199:16-25.) This is beneficial to ratepayers, as the development costs would never become part of the rate base and, consequently, would not be spread across the entire service area. (*Id.*; May Tr. 210:9-13.) Instead, development costs would be paid by those individuals who voluntarily chose to buy a home in the requested area. (*Id.*)

**c) Supporting the City of Surprise General Plan Is in the Long-Term Public Interest**

The Surprise General Plan is a “document of community values . . . that talks about the orderly growth and management of the community . . . [It is] adopted or amended once a year, and is the guiding document for how growth will take place within [Surprise’s] planning area.” (May Tr. 75:8-16.) Before enacting the General Plan, Surprise followed the development and adoption procedures mandated by Arizona’s Growing Smarter legislation, A.R.S. §§ 9-461, *et seq.* This legislation, created through a partnership among the Arizona legislature, interested citizens, and the Governor, is a product of the democratic process that warrants special deference. To undermine the goals and results of this democratic process would be contrary to the public interest. (See *generally* May Tr. 328:7-17 (noting that it is “always good” and “prudent” for municipalities to plan for water and wastewater services).)

The Growing Smarter legislation impresses upon municipalities the importance of actively involving citizens in the development and adoption of municipal growth management plans. See A.R.S. § 9-461.06. Municipalities must “[d]evelop and maintain a general plan” which is a “municipal statement of land development policies . .



. set[ting] forth objectives, principles and standards for local growth and redevelopment.”

A.R.S. § 9-461.01 and § 9-461. The Surprise General Plan must include a water resource element which, among other things, addresses the demand for water that will result from the future growth projected in the general plan, summarizes existing uses, and analyzes how water demand created by future growth will be met. *See* A.R.S. § 9-461.05(D)(1) and (5)(a)-(c).

Surprise ensured “effective, early and continuous public participation in the development . . . of [the General Plan] from all geographic, ethnic and economic areas of the municipality” by using a myriad of procedures designed to obtain maximum public involvement. A.R.S. § 9-461.06(C)(1). These procedures included, among other things, at least two highly-advertised public hearings. A.R.S. § 9-461.06(E); *see also* A.R.S. § 9-461.06(C) (providing for submission of written comments, public hearings, open discussion, communications programs and information services). Surprise was also required to submit the proposed General Plan for review and recommendations to, among others, the Maricopa County’s planning agency. *See* A.R.S. § 9-461.06(D). Thus, Surprise residents, as well as citizens living within the proposed Surprise planning area, were provided numerous opportunities to voice their opinions and provide input to the General Plan. (*See* May Tr. 225:19-226:1.)

In 2000, the General Plan was adopted by the Surprise City Council. (May Tr. 16:20-22.) Subsequently, the General Plan was approved by a majority of qualified Surprise voters. (*Id.*; *see* Ex. COS-10.) Since then, it has been amended about once a year. (May Tr. 75:14-16.)

The General Plan represents a sound balance of local concerns and statewide priorities that promotes the public interest of citizens residing in the Surprise GPA. It is not in the public interest for the Commission to disregard the substantial State and local effort and resources devoted to developing the General Plan by approving an application that directly contradicts an important, mandatory provision included in the General Plan.

**2. Surprise Can Provide Better, More Cost Effective Service in the Same Time Frame as West End**

Comparing Surprise and West End's capabilities to provide services, establishes that Surprise is a more fit and proper entity for servicing the requested area. While both Surprise and West End can provide water services within the same time frame, the level of experience and service that Surprise offers exceeds that offered by West End.

First, as explained above in Section III(B)(1)(b), unlike West End, Surprise is a municipal corporation. Consequently, because it provides services without any pressure to earn a return on the investment for shareholders, Surprise can require higher water quality and system standards. (*See, e.g.*, Ex. COS-10 at p. 123-24 (describing minimum standards for Surprise system); *see generally* May Tr. 211:8-21.) For example, Surprise's General Plan prohibits it from operating a system, like West End's present system, which fails to provide adequate fire flow, experiences significant water loss, and lacks back-up capabilities. (*Compare* Ex. COS-10 at p. 123-24 *with* May Tr. 256:8-25; 270:20-271:8, and 268:3-8.) Such higher standards are in the public interest. Similarly, as a municipal provider, Surprise's mechanism for reimbursing the developer creates a benefit to the public because it ensures that the costs of development are born immediately by those individuals who purchase a home in the

requested area, not all existing and future ratepayers. (*See, supra*, at Section III(B)(1)(b).)

Second, only Surprise can build an integrated water and sewer system. (*See, e.g.*, Ex. COS-16 at p. 4-7; *see also* May Tr. 214:2-17 (explaining why it is in the public interest for Surprise to be the sewer provider for the entire GPA).) Integrated water and sewer systems are highly beneficial to the public. (*See* May Tr. 211:22-213:22; May Tr. 274:15-275:13 (Staff testimony that integrated systems are “better to manage . . . from the environmental issue, to look for . . . financing and . . . to properly us[e] resources”); *see also* May Tr. 103:23-104:6 (describing additional benefits of integrated systems); Sept. Tr. 78:22-79:1 (developer testimony that regional infrastructure, including regional water and sewer services are important to the success of a development).) Indeed, Staff and the Commission previously found the ability to provide an integrated system determinative when assessing competing public service corporation CC&N applications. *See, e.g.*, Commission Decision No. 68453 in Docket Nos. W-04264A-04-0438 and SW-04265A-04-0439 (the “Woodruff Matter”) attached hereto as Exhibit 1 (adopting Staff’s recommendation to award the CC&N to the integrated provider because “[t]he benefits of developing and operating integrated water and wastewater utilities . . . outweigh the economies imputed to [the non-integrated provider’s] larger scale”); *see generally Citizens Utilities Water Co.*, 108 Ariz. at 300, 497 Ariz. at 59 (“It is desirable to ‘beef up’ the fire protection by having an integrated water system throughout the area.”).

Third, Surprise, unlike West End, is highly experienced with rapid customer growth. (Ex. COS-13; May Tr. 191:20-192:23; *see also* May Tr. 193:7-194:10 (noting smaller water companies, like West End, lack the same resources, staffing, and

experiences with rapid growth as Surprise and, consequently, may not be able to adequately handle rapid customer growth).) Surprise already has significant staff and other support systems in place to handle thousands of new ratepayers. (See, e.g., Ex. COS-12 (documenting Surprise's staffing and services); May Tr. 193:7-21 (discussing how Surprise's prior rapid growth experiences will help when serving Walden Ranch); May Tr. 241:12-243:19 (discussing Surprise's experience managing sizable sewer staff, and how this will aid Surprise should it decide to assume direct management of its water services, instead of continuing to use a water services subcontractor).)

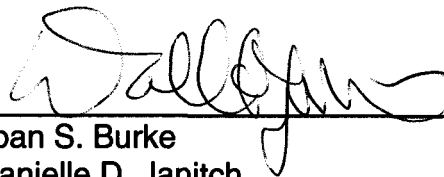
#### **IV. CONCLUSION**

There are numerous independent reasons why the Commission should deny West End's application to extend its CC&N. First, the Commission should grant special deference to the City's General Plan, which directs the City of Surprise to supply water to the requested extension area. To approve this application, which directly contradicts the General Plan, would be contrary to the public interest and would interfere with Surprise's constitutional authority to provide water services. Second, without a request for service from the developer of Walden Ranch, and in light of testimony from that developer that he is just as happy accepting service from the City, there is insufficient evidence of a current public necessity for water services provided by West End. Third, and finally, the City of Surprise has the superior technical, financial and administrative competence to serve the requested area.

Dated this 1<sup>st</sup> day of November, 2006.

OSBORN MALEDON, P.A.

By

A handwritten signature in dark ink, appearing to read "Joan S. Burke", written over a horizontal line.

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# EXHIBIT 1



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**BEFORE THE ARIZONA CORPORATION COMMISSION**

Arizona Corporation Commission

**COMMISSIONERS**

**DOCKETED**

**FEB 02 2006**

JEFF HATCH-MILLER, *Chairman*  
WILLIAM A. MUNDELL  
MARC SPITZER  
MIKE GLEASON  
KRISTIN K. MAYES

DOCKETED BY

*AK*

IN THE MATTER OF THE APPLICATION OF  
WOODRUFF WATER COMPANY, INC. FOR A  
CERTIFICATE OF CONVENIENCE AND  
NECESSITY TO PROVIDE WATER SERVICE IN  
PINAL COUNTY, ARIZONA.

DOCKET NO. W-04264A-04-0438

IN THE MATTER OF THE APPLICATION OF  
WOODRUFF UTILITY COMPANY, INC. FOR A  
CERTIFICATE OF CONVENIENCE AND  
NECESSITY TO PROVIDE SEWER SERVICE IN  
PINAL COUNTY, ARIZONA.

DOCKET NO. SW-04265A-04-0439

IN THE MATTER OF THE APPLICATION OF  
ARIZONA WATER COMPANY, AN ARIZONA  
CORPORATION, TO EXTEND ITS EXISTING  
CERTIFICATES OF CONVENIENCE AND  
NECESSITY AT CASA GRANDE AND  
COOLIDGE, PINAL COUNTY, ARIZONA.

DOCKET NO. W-01445A-04-0755

DECISION NO. 68453

**OPINION AND ORDER**

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of



**BY THE COMMISSION:**

On June 10, 2004, Woodruff Water Company, Inc. ("WWC") and Woodruff Utility Company, Inc. ("WUC"), each filed an application for a Certificate of Convenience and Necessity ("Certificate") with the Arizona Corporation Commission ("Commission") to provide public water and public wastewater utility service, respectively, to various parts of Pinal County, Arizona.

On June 30, 2004, the Commission's Utilities Division ("Staff") issued a notice of insufficiency which indicated that WWC's and WUC's applications had not met the sufficiency requirements of A.A.C. R14-2-411(C), and A.A.C. R14-2-610(C).

On October 7, 2004, Staff issued a letter of administrative completeness to WWC and WUC.

On October 14, 2004, by Procedural Order, a hearing was set in this matter.

On October 19, 2004, Arizona Water Company ("AWC") filed an application to extend the certificates of its Casa Grande system to include a large parcel being developed by Pulte Home Corporation ("Pulte") and its Coolidge system which includes the area for which WWC is seeking a certificate to provide water service together with several adjacent parcels; an application to intervene in the WWC proceeding in the above-captioned matter; and a Motion to Consolidate the proceedings with respect to WWC's application to provide water service.

On November 4, 2004, by Procedural Order, AWC was granted intervention, the above-captioned matters consolidated for purposes of hearing, and a pre-hearing conference scheduled for November 18, 2004.

On November 5, 2004, Staff filed a Motion to Extend due to the issues raised by the competing applications filed by WWC and AWC with respect to the provision of water service in the areas sought to be certificated herein. Staff requested that the procedural schedule established by the Commission's October 14, 2004, Procedural Order in this proceeding be vacated and the time for the above-captioned proceedings be extended to allow for the review and consideration of the competing applications in one hearing.

On November 10, 2004, AWC filed its Joinder in Staff's Motion to Extend. WWC and WUC filed a response indicating that they did not object to a short delay. WWC and WUC also indicated that public notice had been provided as previously ordered. By Procedural Order, Staff's Motion to

Extend was granted until Staff issued a letter of administrative completeness to AWC at which time the time-frame was to be restarted. It was further ordered that the pre-hearing conference scheduled for November 18, 2004, go forward as previously scheduled as well as the hearing scheduled on November 30, 2004, for public comment to be taken.

On November 12, 2004, Staff issued a notice to AWC that its application did not meet the sufficiency requirements of A.A.C. R14-2-411(C).

On November 18, 2004, a pre-hearing conference was convened with WWC, WUC, AWC and Staff present with counsel.

On November 30, 2004, the hearing was convened before a duly authorized Administrative Law Judge at its offices in Phoenix, Arizona. WWC, WUC, AWC and Staff were present with counsel and public comment was taken.

On December 16, 2004, Pulte, the developer of a large adjacent parcel to the area sought to be certificated by WWC, filed a Motion to Intervene and requested expedited consideration of the uncontested extension area which was included in AWC's application herein. There were no objections to Pulte's Motion to Intervene.

On December 30, 2004, by Procedural Order, Pulte was granted intervention in the above-captioned proceeding. Its additional request was taken under advisement.

On January 4, 2005, AWC filed a Response to the Insufficiency Letter.

On January 5, 2005, WWC and WUC filed a copy of their Affidavit of Publication.

On January 20, 2005, Staff issued a notice of administrative sufficiency to AWC pursuant to A.A.C. R14-2-411(C).

On January 24, 2005, by Procedural Order, the proceeding was scheduled for hearing on April 18, 2005.

On January 27, 2005, Staff filed a Motion to Reschedule Hearing because a key Staff witness would be unavailable to testify due to a scheduling conflict.

On January 31, 2005, by Revised Procedural Order, the Commission rescheduled the proceeding.

Prior to the rescheduling of the proceeding, AWC filed what was captioned as "Motion for

1 Procedural Order Concerning Prefiled Testimony" ("PF Motion") which requested that a Procedural  
2 Order be issued directing the parties to prefile prepared direct and rebuttal testimony and exhibits.  
3 Subsequently, Staff filed a response objecting to AWC's PF Motion.

4 On February 1, 2005, AWC, in support of the PF Motion, filed a reply to Staff's response.

5 On February 2, 2005, WWC and WUC filed their response supporting Staff's position and  
6 argued further that the proceeding would be unduly delayed if AWC's PF Motion is granted.

7 On February 7, 2005, AWC filed its reply to WWC's and WUC's response.

8 On February 8, 2005, by Procedural Order, AWC's PF Motion was denied.

9 On April 18, 2005, during a teleconference arranged by the parties, it was determined that  
0 because of the number of witnesses being called to testify by the parties that at least two to three days  
of hearing time would be required and that the hearing should be continued to a more appropriate  
12 date.

On April 19, 2005, by Procedural Order, the evidentiary hearing portion of the proceeding  
14 was continued to commence on May 23, 2005 and the timeframe rule suspended.

15 On April 30, 2005, an additional day of hearing was held for the purpose of taking public  
16 comment only.

17 On May 23, 2005, the hearing was reconvened as ordered with WWC, WUC, AWC, Pulte  
18 and Staff present with counsel for the taking of evidence.

19 On May 25, 2005, the parties agreed that additional time was needed for the evidentiary  
20 portion of the proceeding. It was agreed that the matter would reconvene on June 27, 2005 and that  
1 an additional day of hearing also be scheduled, if necessary.

22 On June 1, 2005, by Procedural Order, the hearing was scheduled to reconvene on June 27  
23 and 29, 2005. The proceeding was reconvened as ordered and upon agreement of the parties, an  
24 additional day of hearing took place on June 30, 2005.

25 On June 30, 2005, the parties further agreed that the matter reconvene on August 1, 3 and 4,  
26 2005, if all counsel were available. Subsequently, an attorney for WWC and WUC indicated  
27 telephonically that he would not be available on August 1, 2005.

28 On July 5, 2005, by Procedural Order, the hearing was scheduled to reconvene on August 3,

, 2005.

On August 3, 2005, the proceeding was reconvened pursuant to the Commission's Procedural Order. The parties were present with counsel and upon completion of the presentation of evidence, the parties were ordered to file, by September 16, 2005, Closing Briefs in lieu of closing arguments. Subsequently, the parties were granted leave telephonically to file their briefs on September 19, 2005, and the matter was taken under advisement pending submission of a Recommended Opinion and Order to the Commission.

\* \* \* \* \*

Having considered the entire record herein and being fully advised in the premises, the Commission finds, concludes, and orders that:

**FINDINGS OF FACT**

1. WWC and WUC are Arizona corporations' that were formed to provide public water and wastewater treatment service to a 3,200 acre parcel that is to be called Sandia and is to be developed by Pivotal Group ("Pivotal") into a master-planned subdivision consisting of approximately 9,500 or more residential units along with commercial development, schools, parks and a golf course on land that has previously been used for agricultural purposes in an area located between Casa Grande and Coolidge, Pinal County, Arizona.

2. Pursuant to authority granted by the Commission, AWC is an Arizona corporation which is engaged in the business of providing water service to approximately 80,000 customers in portions of Gila, Navajo, Cochise, Maricopa, Pima, Yavapai, Coconino and Pinal counties, Arizona.

3. On June 10, 2004, WWC and WUC each filed an application for a Certificate to provide public water and public wastewater treatment service, respectively, to what is to be the subdivision known as Sandia in Pinal County, whose legal description is set forth in Exhibit A, attached hereto and incorporated herein by reference.

4. On October 19, 2004, AWC filed an application to extend its Casa Grande Certificate to provide water to an adjacent parcel consisting of approximately 565 acres for which it has received

WWC and WUC are owned by Pivotal Sandia, L.L.C. which in turn is controlled by Pivotal Group X, L.L.C. which is in turn controlled by the F. Francis Najafi Family Trust. Mr. Francis Najafi is the sole director of both WWC and WUC.

a request for service from Pulte that is to be developed into a subdivision known as Martin Ranch where approximately 1,500 residential units will be built. AWC's application also includes an extension of its Coolidge system for the Sandia parcel and extensions to other surrounding parcels for which it has not received requests for service, whose legal description is set forth in Exhibit B and incorporated by reference.\*

#### WWC and WUC Applications

5. In support of their applications, WWC and WUC called the following witnesses: Mr. Francis Najafi, CEO of Pivotal Group; Mr. Carl Polen, Executive Vice-president of Pivotal Group and Vice-president of both WWC and WUC; Ms. Lisa Farrington, CEO of LJ Farrington Engineers, Inc.; Mr. Troy Bontrager, a civil engineer with Wood/Patel and Associates; Mr. Steve Noel, a geologist and CEO of Southwest Ground Water Consultants; and Mr. Ronald L. Kozoman, a CPA.

6. Pursuant to the Commission's Procedural Order, WWC and WUC filed certification that public notice had been given of the proceeding and hearing thereon.

7. Although there are no other municipal or public water or wastewater utilities within the area sought to be certificated by WWC and WUC, AWC provides public water service to the west in Casa Grande and to the east in Coolidge close to the area sought to be certificated herein by WWC and WUC.

8. The area which Pivotal intends to develop as Sandia has been owned by the Wurtz family and has been utilized for agricultural purposes for a number of years. The family is selling its land to Pivotal and has requested water and wastewater service from WWC and WUC. The family's request for water service will provide a mechanism to convert their irrigation rights to water rights that can be used for development and private purposes.

9. Mr. Najafi described the activities of Pivotal as a successful broadly based multifaceted multimillion dollar development company dealing in both residential and commercial properties along with master-planned communities outside of Arizona and also including the operation of the Century Plaza Hotel in Los Angeles, California. He explained that the Company had

<sup>2</sup> AWC's Coolidge and Casa Grande systems are part of AWC's Western Group of systems.

1 a 30-year plus track record of investing and developing real estate and has a capital base in excess of  
2 \$500 million.

3 Pivotal Sandia LLC had been formed to develop Sandia as a  
4 master-planned community in Pinal County because of Pivotal's desire to expand its presence in the  
5 Phoenix area where its base of operations is located.

6 Sandia will take approximately 20 years  
7 until total build out with approximately 25,000 to 30,000 people in the area. He anticipated  
8 that this development would ultimately be annexed by the City of Coolidge, Arizona<sup>3</sup> which is  
9 located just to the east of the area sought to be certificated by WWC and WUC.

10 12. Since Pivotal has not been directly involved in the operation of either a water or  
11 wastewater treatment facility in Arizona, Pivotal began to prepare for WWC's and WUC's operations  
12 by having Mr. Polen join in their initial operations because he has previously worked with Robson  
13 Communities ("Robson") for a number of years in the development and management of their public  
14 utility companies.

15 13. Pivotal has approximately \$300 million available to make capital infusions into WWC  
16 and WUC and to purchase equity positions over time as required for the expansion of the companies.  
17 Mr. Najafi indicated that the utilities would not incur debt in securing funding from Pivotal.

18 14. Pivotal made a "strategic decision" to start WWC and WUC to provide water and  
19 sewer service to the master-planned community, billions of dollars will be invested and it is important that such a critical service  
20 element be included in the project.  
21 element be included in the project.

22 15. Sandia was described as a project which will have housing products varying in price  
23 from approximately \$140,000 to \$350,000 and will include a 27 or 36 hole golf course as part of the  
24 active adult portion of the community that will be constructed during the second phase of Sandia's  
25 development. Also included in the development plans during the first phase are sites for three or four  
26 elementary schools and an area that will be used in the future for a high school.

re Sandia subdivision.

1           16. While it appears that Pivotal has ample capital to invest in the operation of the  
2 utilities, Mr. Najafi indicated that Pivotal is willing to post performance bonds to insure the  
3 continuation of service if the need ever arises for funding and Pivotal does not have ready funds  
4 available.

5           17. Mr. Polen, Pivotal's Executive Vice-president, previously was employed by Robson  
6 as its Chief Financial Officer. He also served on the Board of Directors of the Central Arizona Water  
7 Conservation District from approximately 1996 to 2000 overseeing the operations of the Central  
8 Arizona Project in formulating water policy for the State of Arizona.

9           18. Mr. Polen testified that while he was at Robson he was heavily involved in the  
10 management of the various communities' integrated water and sewer utilities such as Sun Lakes and  
11 Saddlebrook that were developed in conjunction with the various master-planned communities which  
12 Robson developed.

13           19. Mr. Polen is responsible for the management of the Sandia project and he is Vice-  
14 president of both WWC and WUC, where he will be involved in the overall operations of the utilities.

15           20. Mr. Polen testified that Pivotal approached the development of its utilities for Sandia  
16 as an integrated solution which could not be offered by AWC because it is only engaged in the  
17 provision of water service. By approaching the development of WWC and WUC as an integrated  
18 solution to the required public utilities for Sandia, the provision of water service will be integrate  
19 with that of the wastewater treatment system and enable the utilities to develop a reuse program  
20 which Mr. Polen termed "essential" and would be beneficial from a water conservation standpoint.

21           21. Pivotal plans to reuse 100 percent of the effluent which is generated by WUC in parks,  
22 greenbelts and ultimately, on the golf courses.

23           22. According to Mr. Polen, the City of Coolidge is not able to provide Sandia with  
24 wastewater treatment service, and will not be in a position to provide wastewater treatment to the  
25 flows projected to develop at Sandia in the future due to limitations on Coolidge's present wastewater  
26 treatment system, an aerated lagoon system. In fact, Coolidge supported WUC's efforts to get its  
27 own 208 permit in order to establish a separate wastewater treatment system for Sandia.

28           23. It is anticipated that the first phase of development for the construction of homes in

Sandia will begin in the last quarter of 2006 or sometime in 2007.

24. Mr. Polen testified that in preparation for further development, WWC and WUC have secured franchises for the area sought to be certificated herein from the Pinal County Board of Supervisors.

25. WUC has also received approval for the Central Arizona Association of Governments ("CAAG") 208 permit in order to provide wastewater treatment service. Additionally, an application for an Aquifer Protection Permit ("APP") has been filed with the Arizona Department of Environmental Quality ("ADEQ").

26. According to Mr. Polen, WWC has filed an initial request to establish a service area right by converting an irrigation grandfathered right to what is known as a Type One Right which is a non-irrigation right permitting the use of water for non-irrigation purposes after the property owner ceases the use of water on farm crops.

27. In order to secure its service area right, WWC is required to provide service for one year and toward this end, WWC has been providing water service to the owners of the farm that sold their land to Pivotal. The application for the service area right was filed on or about September 1, 2004, and according to the rules of the Arizona Department of Water Resources ("ADWR"), Mr. Polen expected that the service area right would be established by September, 2005.

28. WWC plans to provide water service by means of four new wells and one existing well that meet current water quality standards. The four new wells will actually be replacing four existing irrigation wells.

29. Following WWC's application for a physical availability determination ("PAD") for water, ADWR has reviewed the application with supporting data and determined that there is physically available assured water supply for the provision of water service to Sandia. On August 1, 2004, ADWR sent a letter to Mr. Polen which indicated that the department had determined that sufficient ground water is physically available to meet the projected demand of approximately 8,150 acre feet of water per year for 100 years for assured water supply purposes under the department's rule.

30. During each phase of development, Pivotal will apply for a Certificate of Assure



Water Supply ("CAWS"), which is issued by ADWR.

31. Initially, WWC and WUC will contract with a grade four water and wastewater operator who will be their certified operator. However, as Sandia grows, WWC and WUC will hire their own employees who will be its certified operators.

32. Mr. Polen indicated that WWC and WUC will comply with Staffs recommendations including the use of Staffs recommended rates and charges as set forth in the Staff Report and that the utilities will be operated in compliance with Arizona law.

33. Based on Mr. Polen's review of the economic models for WWC and WUC, he believes that by their third year of operations, the utilities will be earning a profit and be viable in part because of the large scale of the Sandia project.

34. WWC and WUC have no current plans to serve any areas outside of Sandia.

35. WWC has no plans to seek a Central Arizona Project ("CAP") allocation because its management believes that it will have adequate water for Sandia from the new wells which will be leveled.

36. Mr. Polen acknowledged that while WUC will operate its wastewater system in Sandia, a Coolidge wastewater treatment collection line will extend in a public utility easement on Val Vista Road through Sandia in order to connect Coolidge's wastewater treatment system to Pulte's Martin Ranch subdivision which is adjacent to and west of Sandia.

37. Ms. Farrington, a self-employed engineer who has been involved in the design of wastewater treatment systems for both municipalities and private providers for almost 20 years, was hired by WUC to design and supervise the construction of the Sandia wastewater treatment and water reclamation plant.

38. Ms. Farrington described how WUC's wastewater treatment and water reclamation plant would be located along the northern edge of the Sandia development, which is located at a down gradient so that the system will be able to utilize gravity flow for the collection of wastewater. WUC will produce A plus effluent, the highest level of effluent that ADEQ currently permits. This effluent will be able to be used in lakes, on golf courses, greenbelts, schoolyards, parks and also for recharge purposes when effluent quantity is greater than the effluent needed for irrigation.

39. WUC will initially be able to treat up to 250,000 gallons of wastewater a day with expansion planned eventually to treat up to three million gallons of wastewater a day when the entire service area requires wastewater treatment.

40. While there is evidence that the City of Coolidge will be developing a wastewater treatment facility that could perhaps provide treatment for some of Sandia's wastewater, the best evidence in the record is the letter from the City of Coolidge which states that it does not plan to serve the Sandia subdivision. This fact is further borne out by amended CAAG 208 plan of Coolidge. An additional problem appears to be the fact that Coolidge's treated effluent would not achieve A plus quality until some time after 2007 or 2008.

41. Delays would also develop with Coolidge's 208 plan since, from an engineering standpoint, the plan does not provide for a way to get treated effluent to the Sandia subdivision and would require that a new 208 plan be approved.

42. Mr. Troy Bontrager worked as the lead engineer to design the water facilities and related infrastructure to serve Sandia. He described that, at build-out, WWC would have six groundwater wells whose water would be pumped to a centralized treatment system and then stored in two 2.5 million gallon storage tanks. The water would then be pumped into transmission mains which would be looped so that there would be "adequate redundancy" to serve customers in the entire subdivision.

43. However, in the initial phase of construction, WWC would construct only one of the 2.5 million gallon storage tanks and have only two wells on line.

44. To treat WWC's water to remove arsenic and fluoride which it expects is in the water, WWC is planning to use an activated alumina system, and it is estimated that centralized treatment will cost approximately \$.95 per 1,000 gallons to treat WWC's water for arsenic and fluoride when it is required.

45. WWC's wells will be drilled in such a way that total dissolved solids ("TDS") and nitrates will be screened off to minimize their effects on the water.

46. The capital costs of water treatment facilities for WWC for the first phase of development will be approximately \$1 million and at full build-out, the cost will be approximately \$2

1 million.

2 47. Mr. Bontrager disagreed with AWC's proposal to serve the first phase of 500 homes to  
3 be constructed in Sandia with only a single main extending over 18,000 feet from AWC's Coolidge  
4 system to the first phase construction site.

5 48. Mr. Steve Noel, a geologist, developed Sandia's PAD for ADWR and based on Mr.  
6 Noel's study, WWC anticipates a demand of 8,159 acre feet of water per year or flows of 5,058 gallons  
7 of water per minute at build-out.

8 49. Mr. Ron Kozoman, a CPA, testified on behalf of WWC and WUC with respect to their  
9 proposed rates and charges and for the proposed plant values, expenses, taxes and depreciation based  
10 on data provided by Ms. Farrington and Mr. Bontrager.

11 50. After reviewing Staff's recommended rates and charges for both WWC and WUC,  
12 Mr. Kozoman indicated that he found Staff's recommended rates and charges acceptable to the  
13 utilities if they are awarded Certificates to provide both water and wastewater treatment because  
14 Staff's proposed rates produced similar revenue levels to those proposed by WWC and WUC.

15 51. Based on Staff's recommended rates and charges, an average monthly bill for a WWC  
16 customer would be approximately \$47 per month.

17 52. These recommended rates are approximately \$18 per month more than an average  
18 customer bill on the Coolidge system.<sup>4</sup>

19 53. According to Mr. Kozman, AWC's rates may not be as reasonable as they appeared at  
20 the time of hearing based on the fact that it is his understanding that AWC will file a rate case in 2007  
21 based on a 2006 test year. Additionally, if the Casa Grande and the Coolidge systems are combined  
22 into one system with the Sandia project, an arsenic treatment expense would surface as would the  
23 cost of treating CAP water. Whereas, since WWC is in agreement with Staff's recommendations  
24 with respect to the proposed rates and charges he believes that WWC's rates will be stable for at least  
25 five years.

26 54. Mr. Kozoman testified that he believes higher operating costs will result for WUC in  
27

28 <sup>4</sup> Based on AWC's recently authorized rates for its Western Group including both the Coolidge and Casa Grande systems in Decision No. 68302 (November 14, 2005).

1 the area of what would be common costs such as billing, operations and maintenance expense result  
if WWC is not approved as the water provider to Sandia.

**AWC Application**

55. In support its application, AWC called the following witnesses: Mr. William M Garfield, President; Mr. Michael Whitehead, Vice-president of Engineering; and Mr. Ralph Kennedy: Vice-president and Treasurer.

56. On February 17, 2005, pursuant to the Commission's Procedural Order, AWC  
8 provided notice of the application and hearing thereon.

57. AWC has been in the water business for 50 years and has 115 wells in Arizona  
10 producing in excess of 55,000 gallons of water per minute or approximately 80 million gallons of  
11 water per day. AWC has approximately \$225 million worth of plant in service with another \$10  
12 million worth of construction work in progress.

58. AWC is growing by approximately 3,700 customers per year with approximately 500  
14 customers added per year in the Coolidge area.

59. AWC has plans to combine both its Casa Grande and Coolidge systems which are  
15 situated on both sides of Sandia as its master plan is developed for the Pinal Valley area. With  
16 AWC's plans for the extension of its Casa Grande Certificate in order to provide public water service  
17 to Martin Ranch, and the possible extension of AWC's Coolidge Certificate to include Sandia, AWC  
18 has renewed its plan to provide for the eventual interconnection of the two systems. Mr. Garfield  
19 indicated that AWC has been discussing this possibility with ADWR and ADEQ for many years  
20 believing that it makes sense to regulate one large utility rather than multiple small utilities.

60. If the Commission approves AWC's entire application, Pulte's Martin Ranch  
23 extension area will be served by AWC's Casa Grande system at Casa Grande's rates, and Sandia will  
24 be provided with water service by means of AWC's Coolidge system at Coolidge's rates.

61. AWC's Casa Grande system has approximately 17,400 customers and water  
26 production of approximately 22 million gallons a day. AWC's Coolidge system provides service to  
27 approximately 3,500 customers and has water production capacity of approximately 6 to 7 million  
28 gallons per day.

1           62.     Mr. Garfield described AWC's water resources available for its Casa Grande service  
2 area by means of a PAD of 62,000 acre-feet of ground water per year for the next 100 years and an  
3 additional 8,884 acre-feet of CAP water allotment. With respect to AWC's Coolidge service area,  
4 AWC has a PAD of 13,510 acre-feet of ground water and a CAP allotment of 2,000 acre-feet.

5           63.     AWC employs in excess of 100 certified operators to operate its various water utility  
6 systems throughout the State of Arizona, and the majority of these operators work in the field and are  
7 not based at the Phoenix office. AWC has its own in house engineering and drafting departments  
8 that are available to its systems as needed, and its own accounting and billing departments in order to  
9 service its various utility systems throughout Arizona.

10          64.     In support of AWC's application, Mr. Garfield testified that AWC has been involved  
11 with the United States Environmental Protection Agency ("EPA") in the operation of two  
12 demonstration arsenic treatment plants which have been operating since June 2004. He also  
13 described that while WWC's experts discussed treatment for arsenic by utilizing an activated alumina  
14 system, AWC has been investigating an ion based media, another technology called ion exchange,  
15 and a third more cost effective method, coagulation/filtration which can be used for larger systems.

16          65.     Mr. Garfield also pointed out that although reverse osmosis could also be used to treat  
17 excess arsenic found in ground water it creates problems because it produces almost 20 percent  
18 wastewater which most wastewater providers do not want discharged into their systems because of  
19 problems with the clean water act and compliance with the Arizona Pollutant Discharge Elimination  
20 system ("AZPEDES") limitations.

21          66.     At various times over the past years, AWC has taken over smaller systems in the area  
22 of Coolidge that failed catastrophically requiring a tie-in with AWC's distribution system.

23          67.     Mr. Garfield referenced Commission Decision No. 62993 (November 3, 2000) which  
24 approved Staff's recommendations in the form of a report regarding the Commission's Water Task  
25 Force ("WTF").<sup>5</sup>

26          68.     In Decision No. 62993, the Commission ordered Staff to work with interested parties  
27

28 <sup>5</sup> The WTF was established by the Commission in Decision No. 60820 (April 24, 1999).

1 such as ADWR, ADEQ, the Residential Utility Consumer Office and representatives of water  
2 companies and citizens groups to develop policies and to address issues that concern water utilities in  
3 Arizona.

4 69. Subsequently, on June 29, 2001, the WTF filed a memorandum to the Commission  
5 which included among other things a plan for the Commission to adopt which would promote the  
6 elimination of numerous non-viable water systems. This proposal, which was never formally adopted  
7 by the Commission, set forth a methodology recommended by Staff describing how an applicant for a  
8 new Certificate to provide water service must demonstrate that existing water utilities have refused to  
9 extend their territories if the applicant were to be considered for a new Certificate to provide water  
10 service to the area which requested service.

11 70. Mr. Garfield pointed out that a primary requirement under the terms of Staff's initial  
12 recommendations had been that the applicant wishing to provide new service present evidence in the  
13 form of refusals from existing water utilities before its application would be considered by the  
14 Commission for a new Certificate and that it was in the public interest for a new Certificate to be  
15 issued. Mr. Garfield argued that since AWC is desirous of providing public water service to the  
16 Sandia subdivision, it would not be in the public interest for a new Certificate to be issued to WWC  
17 by the Commission.

18 71. Mr. Garfield further pointed out that AWC operates with economies of scale and has  
19 only filed two rate applications in the past 20 years, leading to overall rate stability.

20 72. Due to AWC's large service area in the Pinal Valley, AWC will be able to provide  
21 more options to secure water service for Sandia in the event that certain of the wells in the immediate  
22 geographic area of Sandia are found not to be usable.

23 73. AWC's CAP treatment facility is located southeast of the City of Coolidge and  
24 approximately one-half mile from the CAP canal. AWC envisions treating both the Coolidge  
25 and Casa Grande CAP allocations at this one centralized plant, which it is estimated will be  
26 completed between 2010 and 2012.

27 74. Although AWC does not provide public wastewater service, in a number of the  
28 Company's certificated areas there are both private and municipal wastewater systems which provide

wastewater service in conjunction with AWC's provision of water service such as in Casa Grande.

75. In areas where there are unrelated wastewater providers, AWC provides information to wastewater providers and informs them when a customer begins to receive water service in order that the wastewater provider may begin to bill for its services. Depending on the needs of the wastewater provider, AWC provides whatever information is required to wastewater providers such as in the Robson community, Saddlebrook Ranch, where AWC provides water and a Robson subsidiary provides wastewater treatment. AWC also works with the wastewater provider to provide an integrated approach which meets the overall water needs of a master-planned community.

76. Mr. Garfield believes AWC could perform a combined water/wastewater treatment billing to achieve an economy of scale and lower billing costs for WUC. In conjunction with this issue, Mr. Garfield cited Decision No. 66998 (May 24, 2004) in which the Commission approved a tariff at variance from A.A.C. R14-2-410(A)(2), and which permits Arizona-American Water Company ("AZAM"), the water provider to Bullhead City, to aid the city which provides the wastewater treatment, in the collection of delinquent wastewater bills by allowing AZAM to terminate water service to sewer customers who do not pay the city for their wastewater treatment bills when due.

77. AWC is ready, willing and able to provide service to Martin Ranch and will comply with the conditions recommended by Staff.

78. Neither Sandia's developer nor the Cardon Hiatt Companies ("CHC") that own a 720 acre parcel east of Sandia have requested inclusion of their parcels within AWC's requested extension area for its Coolidge system.

79. AWC will have areas which it can interconnect its Coolidge and Casa Grande systems in the future even if AWC is not certificated to provide water service to the Sandia project due to the location of public utility easements.

80. AWC has not determined when the Coolidge and Casa Grande systems will be integrated for rate making purposes.

81. AWC is willing to provide water service for any of the surrounding areas described in Exhibit B where it has requested an extension of its Certificate herein.

1        82. Mr. Whitehead, AWC's vice-president of engineering testified concerning the  
2 engineering aspects of AWC's application and also described the progress that AWC has made on  
3 approximately 50 sites where it is constructing arsenic treatment plants in order to meet the new  
4 federally mandated arsenic level of 10 parts per billion ("ppb") by January 23, 2006.

5        83. To serve the Martin Ranch subdivision consisting of approximately 1,500 residential  
6 units and some commercial customers, AWC will connect its existing Casa Grande system to Martin  
7 Ranch's distribution system by means of a three and one-half mile main extension at a cost of  
8 approximately \$750,000 which will be funded by means of a main extension agreement with Pulte.  
9 Pursuant to the terms of the agreement, Pulte will provide property and fund the drilling of a new  
10 well to serve additional customers.

11        84. Martin Ranch will fall under the PAD of AWC's Casa Grande system. AWC has both  
12 the financial ability and the operational ability to develop the water system required to serve Martin  
13 Ranch.

14        85. Mr. Whitehead believes that an interconnection between AWC's Coolidge and Casa  
15 Grande systems will occur sometime in the next two years and as a result, AWC wishes to carefully  
16 plan the location of its various transmission mains. He explained that AWC is working towards this  
17 goal in order to achieve an economy of scale through the utilization of one common distribution  
18 system.

19        86. While explaining the overall master plan, Mr. Whitehead explained how AWC has  
20 developed various pressure zones within the Pinal Valley area in order to maintain water pressure for  
21 its customers by incorporating elevated storage tanks which use the force of gravity flow in its  
22 distribution system in place of relying on a hydro-pneumatic system because a gravity flow system is  
23 "far superior" to a hydro-pneumatic system.

24        87. In explaining AWC's system further, Mr. Whitehead described Casa Grande's two  
25 five million gallon storage tanks and a two million gallon storage tank which are constructed at  
26 elevations which enable AWC to use gravity flow to provide pressure on this system.

27        88. With respect to the City of Coolidge areas and areas in the eastern portion of the Pinal  
28 Valley including Sandia, although AWC has an old 100,000 gallon elevated storage tank, AWC has



1 recently acquired a piece of property on Signal Peak where it intends to construct the first of two five  
2 million gallon storage tanks beginning in 2006 that will be used to provide gravity flows of water in  
3 those areas.

4 89. Upon completion of the construction of the initial five million gallon storage tank on  
5 Signal Peak, AWC will "valve off" its 100,000 gallon storage tank because it is old and has been in  
6 use since 1934.

7 90. AWC has numerous plans for the development of its system throughout the Pinal  
8 Valley area because of its present estimate of approximately an additional 50,000 residential units  
9 already planned for construction in approximately 30 new developments that have approached AWC  
10 for service.

11 91. Because of Sandia's location between Casa Grande and Coolidge, Mr. Whitehear  
12 believes the project is essential to AWC in order to interconnect the two city systems in an efficient  
13 loop.

14 92. AWC's initial service to Sandia from its Coolidge system can be achieved by an  
15 interconnection with its Coolidge system at the Heartland subdivision which is approximately one  
16 mile east of Sandia's border. AWC is willing to install a 16-inch main, but only charge Pivotal for a  
17 2-inch main and will pay the difference itself.

18 93. If AWC is awarded a Certificate to provide water service to Sandia, it will enter into  
19 agreements for advances in aid of construction, portions of which will be refundable and portions of  
20 which will be non-refundable. The non-refundable portions would consist primarily of fire hydrants  
21 which do not produce revenue. The remainder of the facility such as storage tanks, transmission and  
22 distribution lines, wells, and booster pump stations which all generate revenue will be refundable  
23 pursuant to A.C.C. R14-2-406. AWC will also utilize a form of rapid recovery refund in some  
24 instances.

25 94. Based on the initial projections from Sandia that there will be approximately 9,000  
26 residential units, AWC determined that six wells would be required to provide water service,  
27 however, with the development of AWC's Signal Peak five million gallon storage tank, AWC does  
28 not believe that it will need any ground storage tanks in the Sandia service area to provide the

1 subdivision with water service.

2 95. If AWC is permitted to provide water service to Sandia, AWC will ultimately  
3 interconnect Sandia to Martin Ranch which is adjacent to the Pivotal project.

4 96. Mr. Whitehead believes that WWC's consultant overestimated the capacity of si<sup>x</sup>  
5 planned wells at 1,200 gallons of water per minute. AWC views the water production from its si<sup>x</sup>  
6 projected wells at a more realistic 750 gallons per minute because Mr. Whitehead insists that in orde<sup>r</sup>  
7 to have good water quality, you have to sacrifice some production by sealing off some of the aquifer.

8 97. AWC's wells for the Coolidge system are below the new minimum standard fo<sup>r</sup>  
9 arsenic effective January 23, 2006.

10 98. AWC's choice for the treatment option for excessive arsenic alone is by blending b<sup>y</sup>  
11 connecting to existing water systems with low concentrations of arsenic.

12 99. AWC favors using coagulation/filtration as a methodology for treating water with high  
13 TDS and arsenic content.

14 100. While indicating that AWC c<sup>u</sup>rently has 1.7 million gallons of storage capacity in  
15 Coolidge to serve Coolidge and the new Sandia area, Mr. Whitehead pointed out that once the initial  
16 Signal Peak five million gallon storage tank is completed, the issue of available water will not be  
17 significant.

18 101. With respect to the provisio<sup>n</sup> of service to Martin Ranch and Sandia, AWC has  
19 franchises from both Pinal County and the City of Coolidge.

20 102. Although AWC's Casa Grande wells have arsenic content in excess of the new  
21 minimum arsenic standard, they will be treated in order that AWC's water will not violate the new  
22 minimum arsenic standard of 10 ppb effective January 23, 2006.

23 103. Six new wells will have to be drilled for AWC to serve Sandia because existing  
24 capacity in Coolidge is reserved for existing customers.

25 104. AWC estimates that if arsenic treatment is necessary for wells to provide water service  
26 to the Sandia project, it will add approximately \$600,000 to the cost of each well.

27 105. As with all of its main extension agreements, if AWC is awarded a Certificate to  
28 provide water service to Sandia, AWC will submit all extension agreements with Pivotal for

1 Commission approval.

2 106. AWC's vice-president and treasurer, Mr. Kennedy, described AWC as a closely held  
3 corporation owned by approximately 50 inter-related family members.

4 107. Over the 50 years that AWC has been in business, it has developed financial  
5 relationships with banks and insurance companies in order to carry on its business and has also issued  
6 bonds to interested investors.

7 108. AWC is suggesting that financing for Sandia be made through refundable developer  
8 advances, with a more favorable method of refunding than the typical 10 percent 10 year refund  
9 discussed in the Commission's rule at A.A.C. R14-2-406. AWC would instead utilize what it terms a  
10 "rapid pay back approach". This pay back provides for refunding all of the costs advanced by the  
11 developer for back-bone infrastructure at the time the development is fully built out or within six  
12 months of that date.

13 109. AWC believes that the developer should initially fund backbone plant because it  
14 believes that the risk of development should fall on the developer rather than on rate payer.

15 110. AWC will enter into separate main extension agreements covering the cost of the  
16 distribution system which will be subject to the above-referenced 10-year, 10 percent refund  
17 described in the Commission's rules.

18 111. Upon request, AWC is willing to provide water sales information to wastewater  
19 treatment utilities in a form which will be useful to them and in return charge a nominal fee for the  
20 service such as the \$50 a month fee it charges to the City of Mesa.

21 **Staff's Position**

22 112. During Staff's presentation, Mr. Steve Olea, Assistant Director of the Utilities  
23 Division, testified in support of Staff's position and adopted the recommendations made in the Staff  
24 Report by Mr. Jim Fisher, a former Staff executive consultant.

25 113. Staff received an e-mail dated March 30, 2005, from the City of Coolidge's economic  
26 development director which verified that the City of Coolidge is not going to provide wastewater  
27 treatment service to Sandia and that it supports WUC's application for a Certificate in this  
28 proceeding.

1        114. Mr. Olea, as a former member of the Commission's WTF, recalled that although Staff  
2 had recommended in Decision No. 62993 the Commission adopt certain policies with respect to the  
3 granting of new Certificates for water utilities, the Commission has not adopted any such policies  
4 formally in the form of a signed Order.

5        115. Concerning the application of the Commission's rule A.A.C. R14-2-406, as it relates  
6 to whether the developer or the water provider should pay the costs of constructing backbone plant,  
7 Mr. Olea explained that the main reason behind the Commission's decision making is that a public  
8 water utility should not take the risk the developer is taking in developing his property.

9        116. Mr. Olea clarified Staff's recommendation in its report which requires AWC to file a  
10 copy of an updated ADWR PAD for the areas requested to be certificated by AWC, stating that the  
11 documentation could be in a form of "something from the Department that says there's a 100 years  
12 worth of water there to serve this development."

13        117. With respect to the competing application of WWC and AWC to provide water service  
14 to Sandia, Mr. Olea opined that, "there was going to be a Woodruff wastewater utility regardless,"  
15 and because of Staff's past experience with stand alone wastewater utility companies failing, Staff  
16 selected an integrated approach choosing WWC as its recommended water provider.

17        118. According to Mr. Olea, the WTF's recommendation to the Commission was a plan to  
18 prevent and stop, from a public policy prospective, the certification of water companies for smaller  
19 100 to 200 lot subdivisions and not the development of larger water companies formed to provide  
20 service to 5,000 to 6,000 lots projects.

21        119. In concluding his testimony, Mr. Olea pointed out that with respect to AWC's  
22 application, Staff is recommending only that the extension area be approved for Martin Ranch as  
23 including all of Section 26 of Township 5 South, Range 7 East of the Gila and Salt River Base and  
24 Meridian, Pinal County, Arizona which is marked Exhibit C, attached hereto and incorporated herein  
25 by reference. He stated further that no other portions of the areas described in Exhibit B were  
26 recommended for approval including Sandia where AWC had not received specific requests for  
27 service because no need for service had been shown.

28        120. In the Staff Report filed on March 3, 2005, Staff recommended approval of WWC's

1 and WUC's applications for Certificates in order to provide public water and wastewater treatment  
 2 service, respectively, for the area described in Exhibit A. With respect to AWC's application, Staff is  
 3 recommending approval of its application for an extension for only the area described in Exhibit C.  
 4 In the event that the Commission approves AWC's application for an extension of its Certificate to  
 5 provide water service to Sandia, Mr. Olea further recommended that the same conditions which  
 6 would apply to AWC's extension of its Certificate for Martin Ranch would be applicable in the case  
 7 of Sandia also.

8 121. The initial rates and charges for WWC's and WUC's public water and wastewater  
 9 treatment utility systems, respectively, as proposed by Staff and as agreed upon by Applicant<sup>6</sup> are as  
 10 follows:

11 WWC Water Rates

12 MONTHLY CUSTOMER CHARGE:

13 5/8" x 3/4" Meter	\$ 20.00
14 3/4" Meter	30.00
15 1" Meter	50.00
1 1/2" Meter	100.00
2" Meter	160.00
3" Meter	300.00
17 4" Meter	500.00
6" Meter	1,000.00
18 8" Meter	\$1,600.00
10" Meter	2,300.00
19 12" Meter	4,300.00

20 Commodity Charges -- Per 1,000 Gallons of Usage:

21 5/8" x 3/4" Meters	
0 to 4,000 gallons	\$2.08
22 4,001 to 20,000 gallons	3.12
20,001 and above gallons	3.74
23 3/4" Meters	
0 to 4,000 gallons	2.08
24 4,001 to 20,000 gallons	3.12
20,001 and above gallons	3.74
25 1" Meters	
26 0 to 25,000 gallons	3.12

27  
 28 <sup>6</sup> During the hearing, WWC and WUC indicated that Staff's proposed rates were acceptable to both utilities because Staff's proposed rates would produce similar revenue levels to those proposed by WWC and WUC.

1	25,001 and above gallons	3.74
2	<b>1 1/2" Meters</b>	
3	0 to 42,000 gallons	3.12
4	42,001 and above gallons	3.74
5	<b>2" Meters</b>	
6	0 to 63,000 gallons	3.12
7	63,001 and above gallons	3.74
8	<b>School/2" Meters</b>	
9	0 to 63,000 gallons	3.12
10	63,001 and above gallons	3.74
11	<b>3" Meters</b>	
12	0 to 120,000 gallons	3.12
13	120,001 and above gallons	3.74
14	<b>4" Meters</b>	
15	0 to 180,000 gallons	3.12
16	180,001 and above gallons	3.74
17	<b>6" Meters</b>	
18	0 to 207,000 gallons	3.12
19	207,001 and above gallons	3.74
20	<b>8" Meters</b>	
21	0 to 235,000 gallons	3.12
22	235,001 and above gallons	3.74
23	<b>10" Meters</b>	
24	0 to 262,000 gallons	3.12
25	262,001 and above gallons	3.74
26	<b>12" Meters</b>	
27	0 to 290,000 gallons	3.12
28	290,001 and above gallons	3.74

**SERVICE LINE AND METER INSTALLATION CHARGES:**  
 (Refundable pursuant to A.A.C. R14-2-40-5)

21	5/8" x 3/4" Meter	\$ 400.00
22	3/4" Meter	440.00
23	1" Meter	500.00
24	1 1/2" Meter	715.00
25	2" Meter (Turbo)	1,170.00
26	2" Meter (Compound)	1,700.00
27	3" Meter (Turbo)	1,585.00
28	3" Meter (Compound)	2,190.00
	4" Meter (Turbo)	2,540.00
	4" Meter (Compound)	3,215.00
	6" Meter (Turbo)	4,815.00
	6" Meter (Compound)	6,270.00
	8" Meter (Turbo)	Cost (a)
	8" Meter (Compound)	Cost (a)
	10" Meter (Turbo)	Cost (a)

## 12 Meter (Compound)

Cost (a)

(a) Cost to include parts, labor, overhead and all applicable taxes including income taxes.

SERVICE CHARGES:

Establishment	\$30.00
Establishment (After Hours)	45.00
Reconnection (Delinquent)	35.00
NSF Check	25.00
Meter Re-Read (If Correct)	30.00
Meter Test (If Correct)	30.00
Deferred Payment (per month)	1.50%
Deposit Interest (per annum)	*
Deposit	*
Re-Establishment (within 12 months)	**
Late Payment Penalty (per month)	1.50%

Monthly Service Charge for Fire Sprinklers:

4" or smaller	***
6"	***
8"	***
10"	***
Larger than 10"	***

\* Per Commission Rules R14-2-403(B).

\*\* Number of months off system times the monthly minimum - R14-2-403(D).

\*\*\* 1.00% of monthly minimum for a comparable sized meter connection, but no less than \$5.00 per month. The Service Charge for Fire Sprinklers is only applicable for service lines separate and distinct from the primary water service line.

WUC WASTEWATER RATESMONTHLY CUSTOMER CHARGES BASED ON WATER METER SIZE:

5/8" x 3/4" Meter	\$ 52.00
3/4" Meter	52.00
1" Meter	130.00
1 1/2" Meter	260.00
2" Meter	416.00
3" Meter	780.00
4" Meter	1,300.00
6" Meter	2,600.00

Effluent Sales - General Irrigation:

Per Acre Foot (or 325,851 gallons) for

General Irrigation \$300.00  
Per 1,000 Gallons for general irrigation 0.92

Effluent Sales – Agricultural Irrigation:

Per Acre Foot (or 325,851 gallons) of treated effluent \$300.00  
Per 1,000 Gallons of treated effluent 0.92

SERVICE CHARGES

Establishment of Service (a) \$30.00  
Establishment, After Regular Working

Hours 35.00  
Re-establishment

Reconnection 30.00  
Service Call Out, After Regular Hours (per hour)

35.00  
Minimum Deposit 35.00

Deposit Interest (per annum) \*

NSF Check Charge 25.00

Late Payment Penalty (per month) 1.50%

Deferred Payment (per month) 1.50%

Main Extension and additional facilities agreements At cost

All revenue related taxes will be charged customers At cost

(a) Collected only if customer is not also a water customer.  
Per Commission Rules R14-2-603(B).

\*\* Number of months off system times the monthly R14-2-603(D).

122. With respect to WWC, Staff made additional recommendations as follows:

1. that the Commission find that WWC's FVRB devoted to water service is projected to \$4,458,876;
2. that the Commission approve Staff's proposed rates for WWC;
3. that the Commission order WWC to file, within 30 days of the effective date of this Decision, with the Commission's Docket Control, as a compliance item, a tariff consistent with the rates and charges authorized herein by the Commission;
4. that the Commission order WWC to file, within 60 days of the effective date of this Decision, with the Commission's Docket Control, as a compliance item, a backflow prevention tariff and a curtailment tariff;



- 1 5. 'that the Commission order WWC to file, not later than three months
- 2 following the fifth anniversary of the effective date of this Decision, with
- 3 the Commission's Docket Control, a rate application;
- 4 6. that the Commission order WWC to file, within two years of the effective
- 5 date of this Decision, with the Commission's Docket Control, as a
- 6 compliance item, a copy of the ADEQ Certificate of Approval to Construct
- 7 ("CAC");
- 8 7. that the Commission order WWC to file, within 365 days of the effective
- 9 date of this Decision, with the Commission's Docket Control, as a
- 10 compliance item, a report on the arsenic levels of its production wells;
- 11 8. that the Commission order WWC to file, within two years of the effective
- 12 date of this Decision, with the Commission's Docket Control, as a
- 13 compliance item. a copy of the develoner's Certificate of Assured Water
- 14 Supply, or as an alternative, a copy of its designation of an assured water
- 15 supply issued by ADWR;
- 16 9. that the Commission order WWC to maintain its books and records in
- 17 accordance with the National Association of Regulatory Utility
- 18 Commission ("NARUC") Uniform System of Accounts for Water Utilities;
- 19 10. that the Commission order WWC to notify, within 30 days of initiating
- 20 service to its first customer, the Compliance Section of the Utilities
- 21 Division; and
- 22 11. that the Commission authorize WWC to use the depreciation rates as filed.
- 23 123. Staff further recommends that the Commission's approval of a certificate for WWC
- 24 should be rendered null and void should WWC fail to meet condition numbers three, four, six, seven
- 25 and eight of Findings of Fact No. 122 within the time specified above.
- 26 124. With respect to WUC, Staff made additional recommendations as follows:
- 27 1. that the Commission find that WUC's projected fair value of the property
- 28 devoted to wastewater service is \$7,914,418;

- 1                   2. that the Commission approve Staffs proposed wastewater rates and
- 2                   charges;
- 3                   3. that the Commission order WUC to file, within 30 days of the effective
- 4                   date of this Decision, with the Commission's Docket Control, as a
- 5                   compliance item, a tariff consistent with the rates and charges authorized
- 6                   herein by the Commission;
- 7                   4. that the Commission order WUC to file, within two years of the effective
- 8                   date of this Decision, with the Commission's Docket Control, as a
- 9                   compliance item, a copy of the ADEQ Aquifer Protection Permit for the
- 10                  WUC wastewater treatment facility authorizing treatment and disposal
- 11                  capacity to 3 million gallons per day;
- 12                  5. that the Commission order WUC to file, not later than three months
- 13                  following the fifth anniversary of the effective date of this Decision, a rate
- 14                  application;
- 15                  6. that the Commission order WUC to maintain its books and records in
- 16                  accordance with the NARUC Uniform System of Accounts for Wastewater
- 17                  Treatment Utilities;
- 18                  7. that the Commission order WUC to notify, within 30 days of initiating
- 19                  service to its first customer, the Compliance Section of the Utilities
- 20                  Division; and
- 21                  8. that the Commission authorize WUC to use the depreciation rates as filed.

22           125. Staff further recommends that the Commission's approval of a certificate for WUC  
23 should be rendered null and void if WUC fails to meet condition numbers three and four of Findings  
24 of Fact No. 124 within the time specified.

25           126. With respect to AWC, Staff made the following additional recommendations for the  
26 provision of service to the Martin Ranch subdivision:

- 27                   1. that the Commission order AWC to charge its existing rates and charges
- 28                   for Casa Grande in the Martin Ranch subdivision;

2. that the Commission order AWC to file, within two years of the effective date of this Decision, with the Commission's Docket Control, as a compliance item, a copy of an updated ADWR PAD for the Martin Ranch subdivision;
3. that the Commission order AWC to file, within 365 days of the effective date of this Decision, with the Commission's Docket Control, as a compliance item, a copy of the main extension agreement associated with the proposed Martin Ranch subdivision; and
4. that the Commission order AWC to file, within two years of the effective date of this Decision, with the Commission's Docket Control, as a compliance item, a copy of the ADEQ CAC for water production and storage facilities within the Martin Ranch subdivision.

127. Staff also recommended that, in the event the Commission approves AWC's application to provide water service to Sandia, that the conditions set forth above for service to Martin Ranch be applied to Sandia with the exception that the water rates and charges charged in the Sandia extension area would be those of the Coolidge system.

128. Staff further recommends that the Commission's approval of an extension of AWC's Certificate should be rendered null and void should AWC fail to meet condition numbers two, three and four of Findings of Fact Nos. 126 and 127 as set forth above within the time specified.

129. Following a thorough review of the record, we find that the competing applications of WWC and AWC have approximately equal merit. However, we conclude that it is in the public interest to limit AWC's CC&N expansion to include only the Martin Ranch development area as described in Exhibit C and to grant WWC's application for a CC&N for the Sandia area as described in Exhibit A. We arrive at this conclusion in view of the following:

1. AWC cites Decision No. 62993 to argue that it would not be in the public interest to grant a CC&N to WWC under a recommended policy change, but Decision No. 62993 did not approve the policy change to which AWC refers (Finding of Fact 8a, Decision 62993).

1 neither Sandia nor CHC has requested that their properties be included in  
2 the CC&N extension that AWC seeks for its Coolidge system.

3 3. Pivotal has ample capital to invest in the operation of WWC and WUC.

4 4. The benefits of developing and operating integrated water and wastewater  
5 utilities in this instance outweigh the economies imputed to AWC's larger  
6 scale.

7 5. The Sandia development will be large enough for economic viability as a  
8 stand-alone system.

9 130. With respect to AWC's application to provide water service to the Martin Ranch area  
10 as recommended by Staff, we concur with Staff's recommendation for the Martin Ranch  
11 development as set forth in the Staff Report, and we also concur with Staff's recommendation that  
12 additional areas which have not requested service should not be included in AWC's certificated area  
13 at this time.

14 131. With respect to WUC's application for a Certificate to provide wastewater treatment  
15 service to Sandia, we believe that Staff's recommendations in this regard are proper and that the  
16 application of WUC should be approved along with Staff's additional recommendations being  
17 opted and complied with by WUC.

18 132. Additionally, we believe that since there is no evidence in the record which reveals  
19 that WUC has any prior experience in successfully operating a public utility, a performance bond in  
20 the amount of \$250,000 should ensure that WUC will be able to continue operations for a reasonable  
21 period without Pivotal's financial support, if necessary.

22 133. In recognition of ongoing drought conditions in Arizona, WUC shall provide the  
23 Commission within one year of the effective date of this order a detailed report describing WUC's  
24 progress toward the use of effluent specifically as it pertains to golf courses, ornamental lakes and  
25 other aesthetic water features. This report shall be filed annually, by January 15 of each year, with  
26 the Commission's Docket Control until WUC's next general rate case.

27 134. Because an allowance for the property tax expenses of AWC and WUC are included  
28 in the respective company's rates and will be collected from their customers, the Commission seeks

1 assurances from the companies that any taxes collected from ratepayers have been remitted to the  
2 appropriate taxing authority. It has come to the Commission's attention that a number of water  
3 companies have been unwilling or unable to fulfill their obligation to pay the taxes that were  
4 collected from ratepayers, some for as many as twenty years. It is reasonable, therefore, that as a  
5 preventive measure AWC and WUC shall annually file, as part of their annual reports, affidavits with  
the Utilities Division attesting that they current in paying their property taxes in Arizona

### CONCLUSIONS OF LAW

1 1. On beginning operations, WWC and WUC will be public service corporations within  
the meaning of Article XV of the Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

10 2. AWC is a public service corporation within the meaning of Article XV of the Arizona  
11 Constitution and A.R.S. §§ 40-281, 40-282 and 40-252.

12 3. The Commission has jurisdiction over WWC, WUC and AWC and the subject matter  
13 of the applications.

14 4. Notice of the applications and the hearing thereon was given in accordance with the  
15 law.

16 5. The public convenience and necessity require the issuance of an extension of AWC's  
17 Certificate authorizing it to provide water service to the public in the area sought to be certificated in  
18 Exhibit C attached hereto and incorporated by reference.

19 6. The public convenience and necessity require the issuance of a Certificate to WWC  
20 authorizing it to provide water service to the public in the area described in Exhibit A.

21 7. The public convenience and necessity require the issuance of a Certificate to WUC  
22 authorizing it to provide wastewater treatment service to the public in the area described in Exhibit A.

23 8. AWC is a fit and proper entity to provide water service and to receive extensions of its  
24 Certificate which encompasses the area more fully described in Exhibit C

25 9. WWC is a fit and proper entity to provide water service to the public and to receive a  
26 Certificate which encompasses the areas more fully described in Exhibit A.

27 10. WUC is a fit and proper entity to provide wastewater treatment service to the public  
28 and to receive a Certificate which encompasses the areas more fully described in Exhibit A.

1 11. WWC's application for a Certificate to provide water service to Sandia should be  
2 approved subject to Staffs recommendations and the Company's compliance with the conditions set  
3 forth in Findings of Fact No. 122 or the Certificate authorized hereinafter should be null and void.

4           12.     WUC's application for a Certificate to provide wastewater treatment service to Sandia  
5 should be approved subject to Staffs recommendations and the Company's compliance with the  
6 conditions set forth in Findings of Fact No. 124 or the Certificate authorized hereinafter should be  
7 null and void.

8        13.    The rates and charges authorized hereinafter for WWC and WUC are just and  
9 reasonable.

10 14. AWC's application for an extension of its Certificate to provide water service to  
11 Martin Ranch should be approved subject to Staff's recommendations and AWC's compliance with  
12 the conditions set forth in Findings of Fact No. 126 or the extension authorized hereinafter should be  
13 null and void.

14 15. WUC should post a performance bond of \$250,000 prior to serving its first wastewater  
15 treatment customer.

## ORDER

17 IT IS THEREFORE ORDERED that the application of Woodruff Utility Company, Inc. for a  
18 Certificate of Convenience and Necessity for the operation of a public wastewater treatment utility in  
19 the areas more fully described in Exhibit A be, and is hereby, approved.

20 IT IS FURTHER ORDERED that the application of Woodruff Water Company, Inc. for a  
21 Certificate of Convenience and Necessity for the operation of a public water utility in the areas more  
22 fully described in Exhibit A be, and is hereby, approved.

23 IT IS FURTHER ORDERED that Woodruff Water Company, Inc. and Woodruff Utility  
24 Company, Inc. shall charge those customers in the areas more fully described in Exhibit A Staff's  
25 recommended rates and charges as set forth in Findings of Fact No. 121 until further Order of the  
26 Commission.

27 IT IS FURTHER ORDERED that the approval of Woodruff Utility Company, Inc.'s  
28 application for a Certificate of Convenience and Necessity shall be expressly contingent upon

1 Woodruff Utility Company, Inc.'s filing with Docket Control, as a compliance item in this Docket, at  
2 least 15 days before it first provides wastewater service to any customer, a copy of a form of  
3 ~~performance bond in the amount of \$250,000~~ to ensure Woodruff Utility Company, Inc. shall meet its  
4 obligations arising under its Certificate. The performance bond shall be maintained and copies of  
5 same filed annually on the anniversary date of the initial filing until further order of the Commission  
6 or ten years have passed, whichever is sooner, at which time the bonding requirement may be  
7 terminated upon Woodruff Utility Company, Inc.'s application for same.

8 IT IS FURTHER ORDERED that Woodruff Water Company, Inc. shall comply in all respects  
9 with Findings of Fact No. 122 and Conclusion of Law No. 11.

10 IT IS FURTHER ORDERED that Woodruff Utility Company, Inc. shall comply in all  
11 respects with Findings of Fact No. 124 and Conclusion of Law No. 10 above.

12 IT IS FURTHER ORDERED that the Certificate of Convenience and Necessity granted to  
13 Woodruff Water Company, Inc. for the areas described in Exhibit A shall be deemed null and void if  
14 Woodruff Water Company, Inc. does not timely comply with condition numbers three, four, six,  
15 seven and eight or file copies of the required documentation as set forth in Findings of Fact No. 122  
16 above.

17 IT IS FURTHER ORDERED that Woodruff Water Company, Inc. shall annually file, as part  
18 of its annual report, an affidavit with the Utilities Division attesting that the Company is current in  
19 paying its property taxes in Arizona.

20 IT IS FURTHER ORDERED that the Certificate of Convenience and Necessity granted to  
21 Woodruff Utility Company, Inc. for the areas described in Exhibit A shall be deemed to be null and  
22 void if Woodruff Utility Company, Inc. does not timely comply with condition numbers three and  
23 four or file copies of the required documentation as set forth in Findings of Fact No. 124 above.

24 IT IS FURTHER ORDERED that Woodruff Utility Company, Inc. shall annually file as part  
25 of its annual report, an affidavit with the Utilities Division attesting that the Company is current in  
26 paying its property taxes in Arizona.

27 IT IS FURTHER ORDERED that the application of Arizona Water Company for an  
28 extension of its Certificate of Convenience and Necessity for the operation of public water utility in

1 the areas more fully described in Exhibit A is hereby denied.

2 IT IS FURTHER ORDERED that the application of Arizona Water Company for an  
3 extension of its Certificate of Convenience and Necessity for the operation of a public water utility in  
4 the areas more fully described in Exhibit C is hereby approved.

5 IT IS FURTHER ORDERED that Arizona Water Company shall charge those customers in  
6 the areas more fully described in Exhibit C its existing rates and charges for its Casa Grande system  
7 pursuant to Decision No. 68302 until further Order of the Commission.

8 IT IS FURTHER ORDERED that Arizona Water Company shall comply with all respects  
9 with Findings of Fact Nos. 126 and Conclusion of Law No. 14 above.

10 R ORDERED that if Arizona Water Company does not timely comply with  
11 conditions two, three and four or file copies of the required documentation as described in Findings  
12 of Fact No. 126 for the area described in Exhibit C, the extension of its Certificate of Convenience  
13 and Necessity for the operation of a public water utility in that area shall be deemed null and void.

14 IT IS FURTHER ORDERED that in recognition of ongoing drought conditions in Arizona,  
15 WUC shall provide the Commission within one year of the effective date of this order a detailed  
16 report describing WUC's progress toward the use of effluent specifically as it pertains to golf  
17 courses, ornamental lawns and other aesthetic water features. This report shall be filed annually by  
18 January 15 of each year with the Commission's Docket Control until WUC's next general rate case.

19 ...

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21 ...

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23 ...

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28 ...



1 IT IS FURTHER ORDERED that Arizona Water Company shall annually file as part of its  
2 annual report, an affidavit with the Utilities Division attesting that the Company is current in paying  
3 its property taxes in Arizona.

4 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

6  
7   
8 CHAIRMAN

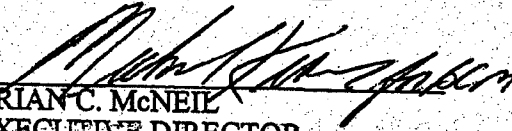
  
COMMISSIONER

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2 COMMISSIONER

  
COMMISSIONER

  
COMMISSIONER

3  
4 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive  
5 Director of the Arizona Corporation Commission, have  
6 hereunto set my hand and caused the official seal of the  
7 Commission to be affixed at the Capitol, in the City of Phoenix,  
8 this 2<sup>nd</sup> day of Feb., 2006.

  
BRIAN C. McNEIL  
EXECUTIVE DIRECTOR

19  
20 DISSENT \_\_\_\_\_

21  
22 DISSENT \_\_\_\_\_

23 MES:mj  
24  
25  
26  
27  
28

1 SERVICE LIST FOR:

WOODRUFF WATER COMPANY, INC.,  
WOODRUFF UTILITY COMPANY, INC. AND  
ARIZONA WATER COMPANY

3 DOCKET NOS.:

W-04264A-04-0438, SW-04265A-04-0439 and W-  
01445A-04-0755

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**Legal Description**  
**Property Located in Sections 13, 14, 23, 24, and 25,**  
**Township 5 South, Range 7 East,**  
**of the Gila and Salt River Base and Meridian**  
**May, 13, 2004**

The following legal description has been prepared based on the ALTA Surveys prepared by WRG Design, Inc., for the Sandia properties. This legal description is a composite legal description for both of the above described properties and sets for the total combined gross area of both properties.

A parcel of land located in Sections 13, 14, 23, 24, and 25 Township 5 South, Range 7 East, of the Gila and Salt River Base and Meridian, Pinal County, Arizona, more particularly described as follows.

Beginning at a 5/8" iron rod monumenting the southwest corner of Section 14; thence N 00°31'43" E 2642.66 feet along the West line of Section 14, to a 3/4" iron rod monumenting the West quarter corner of said Section 14; Thence continuing along said West line N 00°00'36"W 2635.33 feet to a 3/4" iron rod monumenting the northwest corner of said Section 14; Thence N 89°52'59" E 2631.86 feet along the North line of said Section 14, to a 3/4" iron rod monumenting the North quarter corner of Section 14; Thence continuing along said North line S 88°45'43" E 1991.02 feet, to a point at the northeast corner of the West half of the northeast quarter of the northeast quarter, Section 14; Thence S 00°12'14" W 1640.93 feet to the southwest corner of the North 5 acres of the East half of the southeast quarter of the northeast quarter, Section 14; thence S 89°36'16" E 661.75 feet along the South line of North 5 acres of the East half of the southeast quarter of the northeast quarter, Section 14, to a point on the East line of said Section 14; Thence N 00°16'03" E 1631.17 feet along said East line, to the northeast corner of said Section 14; Thence N 89°59'59" E 2624.14 feet along the North line of Section 13, to a G.L.O. brass cap monument at the North quarter corner of said Section 13; Thence S 82°35'33" E 398.40 feet, to a point; Thence S 74°19'38" E 104.24 feet, to a point; Thence S 61°20'53" E 82.69 feet, to a point; Thence S 53°04'34" E 514.00 feet, to a point; Thence S 49°01'16" E 382.30 feet, to a point; Thence S 44°04'05" E 146.45 feet, to a point; Thence S 41°57'17" E 658.86 feet, to a point; Thence S 89°32'32" E 815.13 feet, to a point on the West line of Government Lot 2;

**Area to be added to Casa Grande CC&N**

The South half of the Southwest quarter of ~~Section~~ 23 and The ~~West~~ half ~~of~~ the West half of Section 25 and all of Section 26 of Township 5 South, Range 7 East of the Gila and Salt River Base and Meridian, Pinal County, Arizona

**Area to be added to Coolidge CC&N**

Sections 13, 14 and Section 23, except the South half of the Southwest ~~quarter~~ thereof, ~~Section~~ 24 and Section 25, except the West ~~half~~ of the West half thereof ~~in~~ Township 5 South, Range 7 East of the Gila and Salt River Base and Meridian, Pinal County, Arizona; Together with:

Sections 19, 30 of Township 5 South, Range 8 East of the Gila and Salt River Base and Meridian,, Pinal ~~County~~, Arizona

Thence S 00°06'43" W 37.10 feet, to the southwest corner of said Lot 2 and coincident with the northwest corner of Government Lot 5; Thence S 89°49'58" E 1312.70 feet along the North line of Lot 5, to the northeast corner thereof; Thence S 00°07'43" W 1317.49 feet along the East line of Lot 5 to the southeast corner thereof and coincident with the northwest corner of Government lot 7; Thence S 89°41'56" E 1158.92 feet along the North line of Lot 7, to an iron rod at the East quarter corner of Section 13; Thence S 00°05'12" E 2654.10 feet along the East line of Section 13, to the southeast corner thereof; Thence S 00°05'12" E 441.54 feet along the East line of Section 24, to a point; Thence continuing along said East line S 01°20'51" E 2206.52 feet, to the East quarter corner of said Section 24; Thence continuing along said East line S 01°20'51" E 447.15 feet, to a point; Thence continuing along said East line S 00°13'24" W 2200.06 feet, to a half inch iron rod at the southeast corner of said Section 24; Thence N 89°37'03" W 601.05 feet along the South line of said Section 24 and the North line of Section 25, to a point; Thence S 00°04'16" E 2644.39 to a point on the South line of the North half of Section 25; Thence S 89°38'34" E 609.06 feet, to the southeast corner of said North half, Section 25; Thence S 00°14'41" E 2644.19 feet along the East line of said South half, Section 25, to an aluminum cap monument marking the southeast corner thereof; Thence N 89°42'47" W 5206.93 feet along the South line of said Section 25, to an aluminum cap in hand hole monumenting the South quarter corner of said Section 25; Thence continuing along said South line N 89°44'11" W 1324.50 feet to a point at the southwest corner of the East half of the southwest quarter of said Section 25; Thence N 00°13'12" E 5303.16 feet along the West line of said East half of the southwest and northwest quarter, Section 25, to a point on the North line of said Section 25 and coincident with the South line of said Section 24; Thence N 00°12'38" E 2649.12 feet along said West line, to a point on the North line of the South half of said Section 24; Thence N 89°34'00" W 1323.99 feet along said North line, to a 5/8" iron rod monumenting the West quarter corner of said Section 24; Thence N 003°1'10" E 1347.44 feet along the West line of said Section 24, to a point on the southerly top of bank of the Southside Canal Aqueduct; Thence S 89°52'59" E 331.11 feet along said southerly top of bank, to the beginning of a 580.10 foot radius non-tangent curve to the left; Thence along said curve and continuing along said top of bank 509.80 feet through a central angle of 50°21'10" and a long chord of which bears N 65°49'56" E 493.55 feet, to a point; Thence continuing along said southerly top of bank N 40°07'06" E 1423.14 feet, to a point on the North line of said Section 24;

Thence N 89°52'59" W 0.29 feet along said North line, to a point; Thence continuing along said southerly top of bank N 40°00'29" E 1796.47 feet, to a point; Thence continuing along said southerly top of bank N 40°05'37" E 1633.45 feet to a point on the North line of the South half of Section 13; Thence S 89°41'56" E 1355.63 feet along said North line, to the southwest corner of said Lot 5; Thence N 00°06'43" E 1314.42 feet along the West line of said Lot 5, to the northwest corner thereof; Thence N 89°49'58" W 1313.35 feet, to a point on the East line of the northeast quarter of said Section 13; Thence S 00°05'42" W 1190.33 feet along said East line to a point on the northerly top of bank of the Southside Canal Aqueduct; Thence S 39°53'42" W 157.06 feet along said top of bank, to a point on the south line of the northeast quarter, Section 13; Thence N 89°41'56" W 1212.44 feet along said South line, to a point on the West line of the southeast quarter, Section 13; Thence S 00°04'41" W 1458.40 feet along said West line, to a point on the northerly top of bank of the Southside Canal Aqueduct; Thence S 39°59'32" W 1532.07 feet along said northerly top of bank, to a point; Thence continuing along said northerly top of bank S 39°58'10" W 1395.05 feet, to the beginning of a 559.16 foot radius non-tangent curve to the right; Thence along said curve and continuing along said northerly top of bank 499.62 feet through a central angle of 51°11'42" and a long chord of which bears S 67°22'31" W 483.17 feet to a point; Thence continuing along said northerly top of bank S 89°43'30" W 496.20 feet, to the beginning of a 1185.35 foot radius non-tangent curve to the left; Thence along said curve and continuing along said northerly top of bank 412.46 through a central angle of 19°56'14" and a long chord of which bears S 74°39'56" W 410.39 feet, to a point; Thence continuing along said northerly top of bank S 70°12'37" W 882.53 feet, to a point; Thence continuing along said northerly top of bank S 70°21'29" W 1569.12 feet, to the beginning of a 1071.48 foot radius non-tangent curve to the right; Thence along said curve and continuing along said northerly top of bank 388.24 feet through a central angle of 20°45'38" and a long chord of which bears S 81°29'47" W 386.12 feet, to a point; Thence continuing along said northerly top of bank N 87°21'43" W 942.22 feet, to a point; Thence continuing along said northerly top of bank N 87°19'51" W 1107.10 feet, to a point on the West line of said Section 23; Thence N 00°43'28" E 2178.88 feet along said West line, to the Point of Beginning.

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Excepting there a parcel of land located in the northeast quarter of Section 13, Township 5 South, Range 7 East, of the Gila and Salt River Base and Meridian, Pinal County, Arizona, more particularly described as follows:

Commencing at a **G.L.O** brass cap monument at the North quarter corner of Section 13; Thence S 00°04'41" W 31.14 feet along the West line of the northeast quarter said Section 13, to the **Point of Beginning**; Thence S 78°02'45" E 230.09 feet, to a point; Thence S 44°12'32" E 95.61 feet, to a point; Thence S 03°24'38" E 144.61 feet, to a point; thence S 46°23'44" E 101.26 feet, to a point; Thence S 61°31'23" E 274.04 feet, to a point; Thence S 27°17'20" E 204.04 feet, to a point; thence S 44°20'46" E 135.27 feet, to a point; Thence S 67°42'29" E 410.63 feet, to a point; Thence S 04°59'49" E 330.74 feet, to a point; Thence S 89°37'30" E 489.84 feet, to a point; Thence N 37°58'54" W 659.97 feet, to a point; Thence N 51°54'29" W 1063.14 feet, to a point; Thence N 83°35'27" W 461.27 feet, to the **Point of Beginning**.

The above described properties total gross area is 138,427,484 square feet or 3,177.858 acres, more or less.



*Richard A. Stockman*



### PARCEL DESCRIPTION

Attachment B-1 Parcel 2  
Woodruff Water Company & Woodruff Utility Company

A parcel of land lying within Section 25, Township 5 South, Range 7 East, of the Gila and Salt River Meridian, Pinal County, Arizona, more particularly described as follows:

Commencing at the northeast corner of said Section 25, a 1/2" iron rod in handhole, from which the north quarter corner of said section, a G.L.O. brass cap, bears North 89°37'03" West (basis of bearing), a distance of 5166.18 feet, said point being the **POINT OF BEGINNING**;

**THENCE** along the east line of said Section 25, South 00°14'41" East, a distance of 2644.19 feet;

**THENCE** leaving said east line, North 89°38'34" West, a distance of 609.06 feet;

**THENCE** North 00°04'16" West, a distance of 2644.39 feet, to said north line;

**THENCE** along said north line, South 89°37'03" East, a distance of 601.05 feet, to the **POINT OF BEGINNING**.

Containing 36.7279 acres, or 1,599,866 square feet of land, more or less.

Subject to existing rights-of-way and easements.

This parcel description was prepared without the benefit of survey field work and is based on the unrecorded ALTA/ACSM Land Title Survey prepared by WRG Design, Inc., dated January 3, 2004, job number 4033774.00 and other client provided information. Any monumentation noted in this parcel description is based on said ALTA Survey.

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